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## ABSTRACT

The 36 lessons collected in this publication are designed to introduce students to the rights of the accused and provide a scholarly study of these rights, exploring historical development as well as current application. Lessons are provided for all grade levels. The topics covered include the Bill of Rights, criminal rights amendments, juvenile law, and legal ethics. An appendix contains the U.S. Bill of Rights, a simplified Constitution and Bill of Rights, and the Minnesota Constitution. (RJC)

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# RIGHTS OF THE ACCUSED: CRIMINAL AMENDMENTS IN THE BILL OF RIGHTS

A COMPILATION OF LESSONS BY MINNESOTA TEACHERS

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**RIGHTS OF THE ACCUSED**  
**CRIMINAL AMENDMENTS IN THE BILL OF RIGHTS**  
**A COMPILATION OF LESSONS BY MINNESOTA TEACHERS**

**MINNESOTA CENTER FOR COMMUNITY LEGAL EDUCATION**  
**HAMLINE UNIVERSITY SCHOOL OF LAW**  
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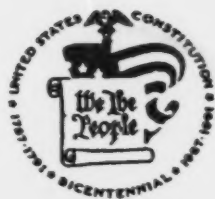


## THE LESSONS IN THIS PUBLICATION WERE:

**WRITTEN BY:** Participants in *"Rights of the Accused: Criminal Protection Under the Bill of Rights--Past, Present, and Future."*

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## INTRODUCTION

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During the week of July 22-26, 1991, 40 elementary and secondary teachers gathered at Hamline University School of Law to explore the provisions of the Bill of Rights that protect individuals accused of crimes. The institute, *"Rights of the Accused: Criminal Protection Under the Bill of Rights--Past, Present, and Future"* provided participants with substantive workshops on the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, with sample curricula designed to teach about these areas, and with the opportunity to research topics of their choice. This institute was funded by grants from the Commission on the Bicentennial of the United States Constitution.

Using information gathered through their research and through the substantive sessions, the teachers developed lessons for elementary and secondary students. The lessons, collected in this publication, have been designed to introduce students to the rights of the accused and provide a scholarly study of these rights, exploring historical development as well as current application.

The lessons in this publication have been organized according to their topics. Lessons that introduce the Bill of Rights and lessons that explore all criminal rights amendments have been grouped and presented first. All other lessons have been placed in the following categories: Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, and Miscellaneous, which includes juvenile law and legal ethics. Within the categories, the lessons are presented alphabetically by lesson title. Although every lesson indicates the appropriate grade level, teachers are encouraged to adapt the lessons to their grade level needs.

The teachers who developed these lessons deserve a hearty note of thanks from us: thanks for working within our very tight time-frame, thanks for responding to our requests so promptly, thanks for committing personal time and energy to the project, and thanks for sharing the creative work products with teachers throughout the country.

One last note of thanks must recognize the long hours spent by Debra Berghoff in the production of this book. With the assistance of Kitty Atkins, she worked nights typing the lessons into the computer and designing them so that they are user friendly and pleasant to look at. Without her efforts, this publication would not exist.

Dear good people, join us in celebrating the December 15, 1991 Bicentennial of the Bill of Rights by teaching your students the foundations of our freedoms. It will be an investment well worth the time.

*Jennifer Bloom*  
Project Director  
October 1991

**RIGHTS OF THE ACCUSED**

**CRIMINAL AMENDMENTS IN THE BILL OF RIGHTS** \_\_\_\_\_

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**RIGHTS OF THE ACCUSED**  
**ALL MEN ARE CREATED EQUAL ??** \_\_\_\_\_

**All Men Are Created Equal ??**  
**by Darrell Erickson**

The following is a multicultural, gender fair three day lesson designed for middle level aged students. Cooperative groups are used to analyze the concepts of perspective and equality. The lesson centers on two court cases - Dred Scott and Standing Bear.

**Students will:**

1. Understand the reasons why and how the American concept of democracy developed and recognize how groups enjoying the rights and responsibilities of American democracy have expanded over time (African Americans, Native Americans)
2. Explore how the United States has not always acted according to democratic ideals
3. Understand that most events in American history have multiple causes that can develop from cultural, religious, social, racial or economic factors
4. Understand that the U.S. is a multicultural society where diverse groups have contributed to the development of American culture.

**Materials needed:** Copies of: **Student Handout 1: PERSPECTIVES**  
**Student Handout 2: THE DRED SCOTT DECISION**  
**Play - *The Trial of Standing Bear* ( NOT INCLUDED)**

(Junior Scholastic Magazine, P.O. Box 3710, Dept. 6000, Jefferson City, MO 65102-9957. Vol. 91, No. 12, February 24, 1989 ISSN00226688 Video tape available from Nebraska ETV Network, P.O. Box 8311, Lincoln NE 6850, 402-472-3611)

**Student Handout 3: I, TOO**

**Time needed:** 3 days

**Grade level:** 6th - 8th grades

**Procedure:**

1. Break class into cooperative groups. Six students per group. Have students read **Student Handout 1: PERSPECTIVES** and role play what probably happened at the accident scene.

## RIGHTS OF THE ACCUSED

### ALL MEN ARE CREATED EQUAL ?? \_\_\_\_\_

#### Procedure cont.

After each group has had time to roleplay, discuss with the entire class. "What seemed to affect each person's view (perspective)?" (location, previous experience, possible loss, etc.) Discuss "Do you think one individual had the correct perspective? Why, why not?"

While in cooperative groups write on the board "*All men are created equal.*" Have the groups discuss what they think this quotation means. Have each group report its consensus decision. (**NOTE TO TEACHER:** Be sure students are aware that the "men" exclusion would not meet today's standards.)

Discuss with the entire class what the phrase meant to the Framers of the Constitution. Write answers on the board.

#### 2. Using cooperative groups tell students to read **Student Handout 2: THE DRED SCOTT DECISION** and decide:

- a. The facts of the case.
- b. The "points at issue."
- c. What they would have decided.
- d. What the court decided.
- e. What were the consequences/implications of the case?

Discuss with the entire class "What do you think affected Justice Taney's perspective on this case?"

How would the following groups/individuals feel about the decision at the time:

- a. slaves
- b. freed blacks
- c. abolitionists
- d. members of Congress
- e. women's rights groups
- f. others

#### 3. Review the decision in the Dred Scott case. Consider what has happened in American history since that decision, i.e., Civil War, 13th, 14th, 15th Amendments.

Explain to the class that they are going to see a play about another court case concerning the 14th Amendment and *equal protection* of the law.

**Tell the class to keep notes on the following:**

1. facts of case
2. the points at issue
3. what they would have decided
4. what the court decided
5. what were the consequences/implications of the decision

**RIGHTS OF THE ACCUSED**

**ALL MEN ARE CREATED EQUAL ??** \_\_\_\_\_

**Procedure cont.**

- 4.** Present the play, *The Trial of Standing Bear*
- 5.** Discuss student answers to questions 1-5. Break back into previous cooperative groups. Distribute **Student Handout 3: I, TOO**. Have students read the poem and discuss the questions provided.



## RIGHTS OF THE ACCUSED

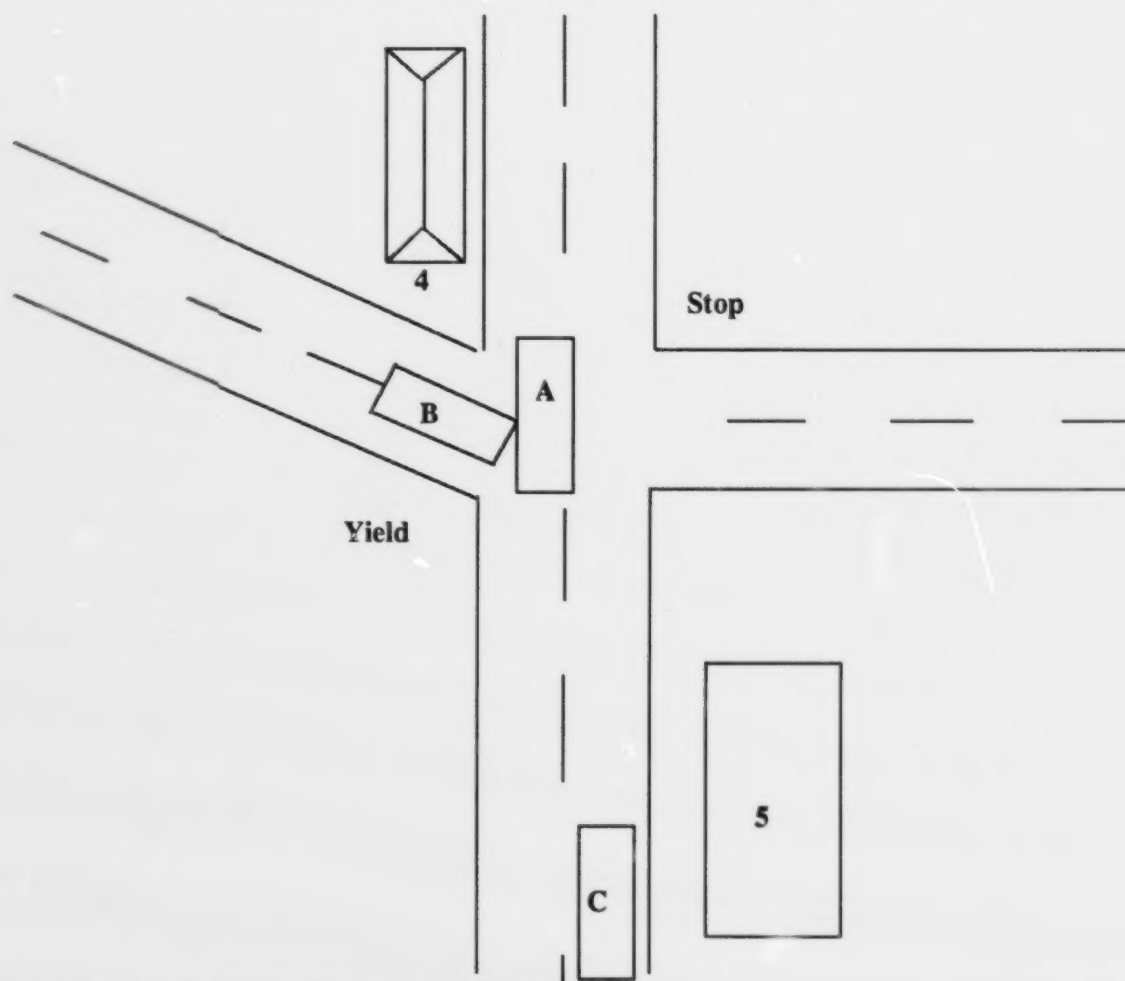
ALL MEN ARE CREATED EQUAL ?? \_\_\_\_\_

### Student Handout 1: PERSPECTIVES

Look at the drawing of the auto accident below. **Auto A** and **Auto B** both received damage to the front end of their autos. **Auto A** had just turned on to the main street from a stop sign. **Auto B** had approached the main street from the side road. There was not a stop sign for **Auto B**, but a sign that said *Yield Right of Way*. Neither driver was seriously injured.

Other people witnessed the accident. The driver of **Auto C** was on the opposite side of the main street driving to lunch at 12:30 p.m. A homeowner at *point four* was sitting in the living room but could see the accident. There have been twelve accidents in one year at or near this spot. The person at *point five* also saw the accident from the third story window of her work place.

The police arrive on the scene and must find out what happened. They interview all the witnesses and make a judgment as to who was responsible for the accident.



**RIGHTS OF THE ACCUSED**  
**ALL MEN ARE CREATED EQUAL ??** \_\_\_\_\_

**Student Handout 2: THE DRED SCOTT DECISION**

Slavery had long caused conflicts in the United States. In the Congress of the United States, the balance between "*slave states*" and "*free states*" had led to many laws and compromises. For example, in 1819 Congress passed a law (the Missouri Compromise) that said Missouri would enter the United States and allow individuals to own slaves but no slavery would be allowed north of Missouri or in any of the new territories that would become states.

In 1957, a case was heard by the Supreme Court of the United States in which a man asked for the Supreme Court's help in ending his condition of slavery and granting his full rights as a U.S. citizen.

Dred Scott was a slave owned by a surgeon who was in the military. In 1833, Scott's master took him from Missouri to Illinois. In 1836, they moved again to Fort Snelling in the territory near the city of St. Paul that would later become the state of Minnesota. At Fort Snelling, Scott married Harriet, a slave of another military officer. Both slaves then lived with Dred's master. In 1846, the couple was taken back to Missouri. In 1846, Dred sued in court for his and his wife's freedom. It took 11 years for his case to reach the Supreme Court in 1857.

Dred Scott's attorneys argued that since Dred and Harriet had been taken to a part of the U.S. where slavery was forbidden they had lived and married as "free" individuals. They were not just passing through Illinois or Minnesota but had lived there for 3 years. The Congress of the United States had passed the law saying slaves were not allowed in that part of the country. If slavery was forbidden, they were free, and once free you could not be made to go back to slavery.

The main opponents of Dred Scott were slave owners who argued that slaves were their property and that the Constitution protects the right to own property. If Dred Scott was granted his freedom, many slaves would also qualify to be free. This would cause slave owners to lose a lot of money.

**The Decision:** In a 7-2 decision, the court ruled against the Scotts. Chief Justice Roger Taney wrote the opinion for the court and explained:

1. "*Negroes*" were not considered citizens of the United States at the time the Constitution was adopted. Therefore, they had "*no rights which the white man was bound to respect.*" Neither Dred Scott nor any other African-American including any people who thought they were "*free*," were actually citizens of the United States. Therefore, African-Americans could not use any United States courts to try and get help for their problems.

2. Congress's law that forbids slavery north of Missouri was in fact illegal because it went against the Constitution. Congress had no right or power to prevent slavery anywhere in the United States at any time.

## **RIGHTS OF THE ACCUSED**

### **ALL MEN ARE CREATED EQUAL ??** \_\_\_\_\_

#### **Student Handout: THE DRED SCOTT DECISION cont.**

3. The Constitution does protect the right of people to own property. Slaves are actually property and not citizens. All property rights are to be equally protected. Because government cannot take away or restrict owning other property, it has no right or power to restrict owning slaves and is legally bound to protect that right. For example, if a slave runs away to any place in the United States the government must help return that property to its owner.

**RIGHTS OF THE ACCUSED**  
**ALL MEN ARE CREATED EQUAL ??** \_\_\_\_\_

**Student Handout 3: I, TOO**

I, Too, sing America.  
I am the darker brother.  
They send me to eat in the kitchen  
when company comes,  
but I laugh,  
and eat well  
and grow strong.

Tomorrow I'll be at the table  
when company comes.  
Nobody'll dare  
say to me  
"eat in the kitchen,"  
then.

Besides,  
they'll see how beautiful I am  
and be ashamed -

I, too, am America

by Langston Hughes

**Questions:**

1. What are the emotions expressed by the poem?
2. How does the poem relate to the cases of Dred Scott and Standing Bear?
3. What would you say about the future in American to Langston Hughes?

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS - REMEMBER ME!**

**Bill of Rights - Remember Me!**  
**by Alan Anderson**

This memory technique will deal with the 1st, 2nd, 4th, 5th, 6th, and 8th Amendments of the Bill of Rights. This is not a lesson to learn the rights, but one to help remember them when finished. Terms used should already be known by students.

**Students will:**

1. Learn the important parts of these Amendments through a fun teaching method
2. Learn in a way that has a higher recall of memorized information.

**Materials needed:** Copies of: **Student Handout: REMEMBER ME**  
**Student Quiz: KNOW YOUR BILL OF RIGHTS**  
Podium with Number 6 on it  
Overhead projector, 8 overheads  
Paper airplane

**Time needed:** 1 1/2 days including quiz. Announce quiz days before and tell them that you will have a good review in class the day before.

**Grade level:** 9th - 12th grades

**Procedure:**

1. State to the students, *"I am willing to try a fun way to learn if you will be willing to participate, even if it means being silly. I will also assure you of a better grade on the quiz if you do what I say."*
2. Select and prepare locations for the various events. **First** event (First Amendment) can happen anywhere in the classroom. The **second** event (Second Amendment) happens in the back of the room. The **third** event (Fourth Amendment) occurs near a door. The **fourth** event (Fifth Amendment) takes place throughout the room, but Principal 1 and Teacher 1 must be able to walk by Teachers 2-13. The **fifth** event (Sixth Amendment) occurs at a podium. The **sixth** event (Eighth Amendment) takes place at an overhead projector.



**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS - REMEMBER ME!**

**Procedure cont.**

3. Tell students that they will be assigned a role in the activity. The roles are **Students 1-12, Principal 1, Teachers 2-13**. *You* will play the role of *Teacher 1*. Provide all students with a copy of **Student Handout: REMEMBER ME**.
4. Read the scenerios aloud, having the students speak their statements according to the reading. Repeat as instructed. For additional impact, have all students say all lines when repeating the story.
5. After completing the activity, go back through story and explain how each part relates to a right contained in the Bill of Rights. Explain how visualizing and relating to other things help a person's memory.
6. Challenge a below average student to do three things before the quiz the next day. Tell him or her to review the story after school, before going to bed, and in the morning, for a total of fifteen minutes. Tell the student that you believe he or she will get 90% on the test and that you have not lost a challenge yet.
7. Next day repeat story quickly and give quiz, **Student Quiz: KNOW YOUR BILL OF RIGHTS**
8. Review the correct answers (**QUIZ ANSWER KEY**).



**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS - REMEMBER ME!**

**Student Handout: Remember Me**

Teacher enters the classroom and states, *"some new rules are coming!"* **Student 1** stands up and states, *"you cannot do that when you are late!"* **Student 2** senses a problem and stands up and states *"Oh no!"* and starts praying. **Student 3** stands up with notebook stating, *"this will be a great article for the school newspaper!"* **Teacher** states *"you cannot do this!"* **Student 4** stands up and states *"if you do not let us, we are going to assemble against you tomorrow!"* **Student 5** stands up and states, *"and if you try to stop us, we will sue you!"*

**Teacher** moves to the back of the room and rolls up his/her sleeves and states, *"I can do this!"* **Student 6** rises and states, *"But the government can do this !"* (throwing a paper airplane towards teacher).

**Teacher** moves over to the door and in jumps **Principal 1** and states, *"Let me see that can in your pocket!"* **Teacher** states *"you cannot search me without probable cause."* **Student 7** arises and states *"I saw him, it is airplane glue, and it is in his pocket!"* (while holding three fingers in the air).

**STOP and repeat the story so far.**

**Principal 1** grabs **Teacher** by the hair and drags him around the classroom for 5 minutes. He goes by a group of 12 teachers and **Teacher** calls out, *"help me you 12"*, but they were to busy playing double jeopardy!

**Principal 1** drags **Teacher** in SPEEDILY to the podium that has a 6 on it. **Principal 1** states *"let's put him on trial here and get a jury of other teachers!"* **Teacher** states *"for what?"* and **Student 8** arises and states, *"you were caught sniffing airplane glue!"* Then **Student 7** stands again and states, *"I saw you!"* **Student 9** stands and states *"Oh, I know Teacher wouldn't do that!"* **Student 10** stands and states, *"I agree, and I will be his lawyer!"*

**STOP and repeat the story.**

**Teacher** moves over to the overhead and **Student 11** stands and states *"your bail is going to be 8 million dollars!"* **Student 12** stands and states *"we find you guilty!"* Then he runs and gets eight overheads, puts them on the overhead, turns it on, and electrocutes teacher.

**The End.**

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS - REMEMBER ME!**

**Student Quiz: KNOW YOUR BILL OF RIGHTS**

NAME: \_\_\_\_\_

1. What are six important parts of the 1st Amendment?
  - 1.
  - 2.
  - 3.
  - 4.
  - 5.
  - 6.
2. What are the two important parts of the 2nd Amendment?
  - 1.
  - 2.
3. What are the five important parts of the 4th Amendment?
  - 1.
  - 2.
  - 3.
  - 4.
  - 5.
4. What are the four main parts of the 5th Amendment?
  - 1.
  - 2.
  - 3.
  - 4.
5. What are the seven main parts of the 6th Amendment?
  - 1.
  - 2.
  - 3.
  - 4.
  - 5.
  - 6.
  - 7.
6. What are the two main parts of the 8th Amendment?
  - 1.
  - 2.

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS - REMEMBER ME!**

**QUIZ ANSWER KEY: Know Your Bill of Rights**

1. What are six important parts of the 1st Amendment?  
(Important parts of the Amendments will be graded as discussed in class.)
  1. Congress shall make no laws against
  2. free religion
  3. free speech
  4. free press
  5. freedom of assembly
  6. right to sue the government
2. What are the two important parts of the 2nd Amendment?
  1. right to bear arms
  2. right to have a militia
3. What are the five important parts of the 4th Amendment?
  1. secure against unreasonable searches without a warrant
  2. probable cause needed
  3. warrant must state place to search and
  4. things to be seized
  5. supported by oath of truth.
4. What are the four main parts of the 5th Amendment?
  1. due process
  2. grand jury
  3. double jeopardy
  4. no self-incrimination
5. What are the seven main parts of the 6th Amendment?
  1. speedy trial
  2. impartial jury
  3. same district
  4. informed of charges against
  5. witnesses against
  6. witnesses for
  7. lawyer for defense
6. What are the two main parts of the 8th Amendment?
  1. no excessive bail
  2. no cruel & unusual punishments

## Children's Literature and the Bill of Rights

by John F. Mueller

Each of the books included in this unit may be used separately or together to teach concepts of authority, responsibility, rulemaking, justice, diversity, freedom, etc. Many may directly relate to constitutional issues like privacy, property, freedom of speech, etc.

**Through children's literature, students will:**

1. Learn to appreciate and understand many rights guaranteed by the Constitution.
2. Learn to value important concepts inherent in our democratic society.

**Materials Needed:** One copy of:

*Strega Nona*, Tomie de Paola  
*The Tale of Peter Rabbit*, Beatrix Potter  
*The Judge*, Harve Zemach  
*Evan's Corner*, Elizabeth Starr Hill  
*The Big Orange Splot*, Daniel Manus Pinkwater  
*The Three Bears*, Yuri Salzman  
*Horton Hatches the Egg*, Dr. Suess

**Grade level:** Primary

**Time to complete:** 1 period for each book

**Procedure:**

1. Each story will be read to or by each student in the class. The teacher may use peer tutors, cooperative groups, older students, choral reading, or tape recorded readings of the books to promote interest and enhance the comprehension of all the students.
2. Constitutional issues and the individual's rights and responsibilities will be the focal point for all the books. The teacher will, either prior to the reading or at the time of discussion, share with the students some history and explanation of the Constitution. The teacher will point out specific application of the Constitution, its Bill of Rights and Amendments, which are found in each of the books.

## **RIGHTS OF THE ACCUSED**

### **CHILDREN'S LITERATURE AND THE BILL OF RIGHTS** \_\_\_\_\_

#### **Procedure cont.**

3. Students shall discuss the application as a class, in small groups, or with a peer. Sharing information can also be done in written projects, role playing activities, skits, video productions which relate the issues brought out in each of the books.
4. Evaluation can be accomplished through observations made during the sharing of ideas and any subsequent activities used by the teacher.

**Note:** The wording of the Amendments to the Constitution is the original wording and will be difficult for students to understand. The teacher should take the time to explain the amendments. The underlined sections are of particular importance to the story. (See **Simplified Bill of Rights in Appended Materials.**)



## RIGHTS OF THE ACCUSED

### CHILDREN'S LITERATURE AND THE BILL OF RIGHTS

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#### DISCUSSION GUIDE: *Strega Nona*, an old tale retold and illustrated by Tomie de Paola

Following rules, privacy, punishment.

**4th Amendment ...** The right of the people to be secure in their persons, houses, papers, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**5th Amendment ...** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

**8th Amendment ...** Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishments inflicted.

**14th Amendment - Section 1 ...** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### ??? Discussion Questions ???

1. What were the responsibilities and rules which *Strega Nona* placed on Big Anthony?
2. What is the difference between a rule (law) and a responsibility?
3. How did Big Anthony violate *Strega Nona*'s privacy?
4. What does it mean to say "*the punishment should fit the crime*"?
5. Did Big Anthony's "punishment" fit "his crime"?
6. Can you think of another punishment?



## RIGHTS OF THE ACCUSED

### CHILDREN'S LITERATURE AND THE BILL OF RIGHTS \_\_\_\_\_

#### DISCUSSION GUIDE: *The Tale of Peter Rabbit* by Beatrix Potter

Following rules, authority, privacy, punishment.

**4th Amendment ...** The right of the people to be secure in their persons, houses, papers, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**5th Amendment ...** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**8th Amendment ...** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### ??? Discussion Questions ???

1. What rule did Mrs. Rabbit make for her children?
2. What is privacy?
3. How was going into Mr. McGregor's garden not respecting his privacy?
4. Why did Mrs. Rabbit make the rule not to go into Mr. McGregor's garden?
5. Why are there punishments for breaking rules?
6. What was Mr. McGregor's punishment for trespassing?
7. What was Mrs. Rabbit's punishment for trespassing?
8. Were these appropriate punishments?

## RIGHTS OF THE ACCUSED

### CHILDREN'S LITERATURE AND THE BILL OF RIGHTS

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**DISCUSSION GUIDE:** *The Judge*, an untrue tale by Harve Zemach with pictures by Margot Zemach

**Justice, freedom, punishment.**

**1st Amendment ...** *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

**6th Amendment ...** *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

**8th Amendment ...** *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

### ??? Discussion Questions ???

1. Were the defendants speaking the truth?
2. Was it right for the judge to send them to jail?
3. Are people free to speak what they know is true?
4. Can speaking the truth sometimes get a person into trouble?
5. Is there a time when the truth might not be a good idea?  
When?
6. Do we (you) have the right to speak what we (you) feel?

## RIGHTS OF THE ACCUSED

### CHILDREN'S LITERATURE AND THE BILL OF RIGHTS \_\_\_\_\_

#### DISCUSSION GUIDE: *Evan's Corner* by Elizabeth Starr Hill

##### Privacy, property.

**4th Amendment ...** The right of the people to be secure in their person, houses, papers, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**5th Amendment ...** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**14th Amendment - Section 1 ...** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### ??? Discussion Questions ???

1. Why did Evan want his own space?
2. Do you ever want to be alone? Why?
3. Did anyone ever bother Evan's corner?
4. Did Evan's family respect Evan's right to privacy?
5. How do you have your privacy?
6. When are times when we (you) fail to respect the privacy of others?

**DISCUSSION GUIDE: *The Big Orange Splot* by Daniel Manus Pinkwater**

**Freedom of expression, property.**

**1st Amendment ...** *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

**14th Amendment - Section 1 ...** *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

**??? Discussion Questions ???**

1. Why did everybody on Mr. Plumbean's street like all the houses the same?
2. What happened after the orange paint was dropped on Mr. Plumbean's house?
3. After people told Mr. Plumbean that they wished he would paint his house, why were they unhappy when he did paint his house?
4. Was it all right for Mr. Plumbean to paint his house the way he did?
5. Could it be wrong to paint your house any way you want? When?

**DISCUSSION GUIDE: *The Three Bears*, retold and illustrated by Yuri Salzman**

**Privacy, property, punishment.**

**4th Amendment ...** The right of the people to be secure in their persons, houses, papers, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**5th Amendment ...** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time or war of public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**8th Amendment ...** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**14th Amendment - Section 1 ...** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**??? Discussion Questions ???**

1. After Goldilocks peeped in the keyhole and saw no one home, she went right in the three Bears' house. Was it O.K. for Goldilocks to do that?
2. Why did Goldilocks enter the house?
3. What is privacy?
4. Did Goldilocks violate the Bears' privacy by entering the house when they weren't at home? How?
5. When Goldilocks was in the Bears' house, was she respectful of their property?



**RIGHTS OF THE ACCUSED**

**CHILDREN'S LITERATURE AND THE BILL OF RIGHTS** \_\_\_\_\_

**DISCUSSION GUIDE: The Three Bears cont.**

6. Is it all right to go into someone's desk or schoolbag?
7. Was Goldilocks punished for what she did?
8. What do you think should have happened to Goldilocks?



RIGHTS OF THE ACCUSED  
CHILDREN'S LITERATURE AND THE BILL OF RIGHTS \_\_\_\_\_

**DISCUSSION GUIDE: *Horton Hatches the Egg* by Dr. Suess**

**Responsibility, property, freedom, justice.**

**5th Amendment ...** *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

**13th Amendment - Section 1 ...** *Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

**14th Amendment - Section 1 ...** *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Not state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

**??? Discussion Questions ???**

1. Why did Mazzie leave her egg with Horton?
2. In what way was Horton a responsible elephant?
3. Whose property was the egg? What in the story tells you that?
4. Why did the hunters capture Horton and his egg?
5. Was it O.K. or wrong for the hunters to capture Horton and his egg?
6. What rights of freedom do we (you) have?
7. Was justice done when the egg hatched? Why?
8. What do you think happened when Horton finally got home?

**RIGHTS OF THE ACCUSED**

**CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY**

**Constitutional Tensions:  
Defendant's Rights v. Rights of Society  
by Evan Brewer and Sandy Aldrich**

**Students will:**

1. Be able to understand the background to the rights found in the Bills of Rights.
2. Be able to list the rights of a defendant in a court of law.
3. Learn to apply the rights as stated in Amendments 1, 4, 5, 6, and 14.
4. Be able to organize information and make valid observations using the information presented.
5. Be able to discuss how defendants' rights and the rights or good of society conflict.

**Materials needed:**

**Declaration of Independence**

**Bill of Rights (See Appended Materials)**

Copies of: **Student Handout: JOHN LOCKE**  
**Student Handout: MAGNA CHARTA**  
**Student Handout: CONSTITUTIONAL TENSION**  
**Student Handout HYPOTHETICAL CASES 1-11**  
(cut to hand out-one per group)  
**ANSWER KEY: Hypothetical Cases 1-11**

**Time needed:** 3 to 4 class periods

**Grade level:** 10th - 12th grades

**Procedure:**

**Day 1**

1. **Introduction Activity:** Ask the students to list the rights they believe they have. Make a list of the answers the students wrote down.
2. Using the **Student Handouts: MAGNA CARTA** and **JOHN LOCKE**, have students read in class. Discuss the rights found in these documents.

## **RIGHTS OF THE ACCUSED**

### **CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY**

#### **Procedure cont.**

3. Read aloud the first **TWO** paragraphs of the **Declaration of Independence**. Discuss the rights found there. What do these rights imply?
4. Read aloud Amendments 1, 4, 5, 6 and 14. (See Appended Materials) What rights are given in these Amendments? What do they really mean?

#### **Day 2**

1. Read and discuss **Student Handout: CONSTITUTIONAL TENSION**. Have the class examine the questions at the bottom of the page. These are the questions that the students will be asking themselves in each **HYPOTHETICAL CASE**.
2. Instruct the class that 1/3 of the class will be defending the rights of the individual, 1/3 of the class will be defending the general public's rights, and 1/3 will be judges who will be deciding which side's argument is stronger. Both sides will argue before the judge why their point of view should be considered.
3. Divide the class into groups of three. Have them line up in three straight lines. Have the 1's be the **defense attorney** or the **attorney for the individual's rights**. Have the 2's be the **prosecution** or the **public's rights attorney**. The 3's will be the **judges**. Send the first person in each line to a spot and hand them a case. Do the same thing with the rest of the students. Cut up **Student Handout: HYPOTHETICAL CASES** and distribute **ONE** to each group. Make sure each group has a case. Tell the judge to give each side five minutes to prepare. Each person in the group will answer the questions found in **Student Handout: CONSTITUTIONAL TENSION**. Each attorney should keep in mind which side he/she is defending. After the five minutes, each side argues the case. The judge may ask questions. Each side can have a rebuttal. This should take about ten minutes. The judge then makes her/his decision.
4. After all groups have concluded, have them remain in their groups and discuss their cases with the class. The attorneys should describe the case and the judge states his/her opinion of the case. If the class wishes to comment on the particular case, allow them a few minutes. Then, the teacher will reveal the real case and read the Supreme Court decision on the matter using the **ANSWER KEY**.
5. If time runs short, have each judge write down opinion for reference during the next class.

## **RIGHTS OF THE ACCUSED**

### **CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY** \_\_\_\_\_

**Procedure cont.**

#### **Day 3**

1. Continue with step 4 from Day 2 if needed.
2. **Follow-up activity:** Discuss public v. defendant's rights. How much do they conflict? Can the sides work together? How much give and take is in our system?

**Alternate Activity:** Using the questions from above, write a group or individual essay on the activity, this should also include an evaluation of the activity.

This can also be a springboard for discussion of search and seizure, self incrimination, and the Exclusionary Rule.

**The following films could be used for additional consideration of the issues:**

Gideon's Trumpet, Law and Order, and Criminal Justice and the Defendant's Right to a Fair Trial-The Constitution: That Delicate Balance

## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

#### Student Handout: MAGNA CHARTA

Angered by the unjust rule of King John, English nobles presented him with a petition in 1215. The Magna Charta (or great charter), approved by King John at Runnymede, contained 63 articles limiting the monarch's power and granting certain rights to his subjects. It became an important symbol of political freedom and laid the foundation of modern constitutional government.

John, by the grace of God, king of England... to his ...faithful subjects, greeting. Know ye, that we... have... by this present Charter confirmed, for us and our heirs forever:

1. that the English church shall be free, and shall have here rights entire, and her liberties inviolate;...that the freedom of elections, which is reckoned most important and very essential to the English church, we... did by our Charter confirm...

12. No scutage (tax paid by nobles to avoid military service) or aid (tax) shall be imposed in our kingdom, unless by the general council of our kingdom...

14. And for holding the general council of the kingdom concerning the assessment of aids (taxes), ...we shall cause to be summoned the (clergy) and greater barons of the realm, singly by our letters. And furthermore, we shall cause to be summoned generally ...all others who hold of us in chief (their subjects), for a certain day ...and to a certain place... And summons being thus made, the business shall proceed on the day appointed, according to the advice of (those) present...

36. Nothing from henceforth shall be given or taken for a writ (order) of inquisition (questioning) of life or limb, but it shall be granted freely, and not denied...

39. No freedom shall be taken or imprisoned, or (dispossessed), or outlawed, or banished, or in any way destroyed, nor will we pass upon him, nor will we send upon him, unless the lawful judgment of his peers, or by the law of the land.

40. We will sell to no man, we will not deny to any man, either justice or right.

41. All merchants shall have safe and secure conduct to go out of, and to come into, England, and to stay...for buying and selling...

60. All the ...liberties, which we have granted...all people of our kingdom, as well clergy as laity, shall observe...toward their dependents.

61. ...Willing to render (all of the above) firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five and twenty barons of the kingdom, ... who shall... hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present Charter confirmed.



Student Handout: JOHN LOCKE

John Locke  
English political philosopher  
from his OF CIVIL GOVERNMENT

*Though in a constituted commonwealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary (based on public trust) power to act for certain ends, there remains still "in the people a supreme power to remove or alter the legislative," when they find the legislative act contrary to the trust reposed in them: for all power given with trust for the attaining an end, being limited by that end; whenever that end is manifestly neglected or opposed, the trust must necessarily be forfeited, and the power to devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body even of their legislators, whenever they shall be so foolish, or so wicked, as to try and carry on designs against the liberties and properties of the subject ... And thus the community may be said in this respect to be always the supreme power.*

## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

#### Student Handout: CONSTITUTIONAL TENSION - AN INTRODUCTION

For over 200 years, the United States has had a Bill of Rights, a series of fundamental liberties afforded all citizens. These rights have created tensions and conflicts because individual liberties often clash with the *public good* or the *community security*. If the Second Amendment gives me the right to own a gun, I may jeopardize the community's security by robbing a liquor store or committing some other violent act. During wartime, freedom of the press may be seen as a threat to the national security (or to the security of the troops involved, as in the Persian Gulf War).

This tension can be referred to by many names - *liberty vs. security*, *guaranteeing due process vs. controlling crime*, etc. Regardless of the name given, the American public, including students, is becoming increasingly more aware of this tension. The Supreme Court is having to examine the rights of the accused person weighed against the rights of the rest of society, especially the victims of crime.

The purpose of this exercise is to examine this constitutional "*tension*." We will debate a number of different hypothetical cases, and for each case you should identify the conflict between the constitutional right involved as well as the larger "public good" being served. Argue these points in your group with your impartial "*judge*," who will render a decision and give reasons for it. Be prepared to share your arguments and decision with the class.

## CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS v. RIGHTS OF SOCIETY

**1. What are the important facts of this case?**

**2. What is/are the constitutional issue(s) involved? What Amendment is at issue?**

3. What is the larger *public good* that may be threatened by the individual's liberty?

**4. What is the judge's decision? What is the reasoning behind this decision?**

## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

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#### Student Handout: HYPOTHETICAL CASES 1-11

Cut up and give 1 to each group

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##### CASE #1

In 1982, Cindy Warmeier became the editor of the school newspaper. Rather than doing standard features, she initiated a comprehensive journalistic study on two issues deemed to be important by her and the faculty journalism advisor. These issues were Teen Pregnancy and the Effects of Divorce on Students. Many sensitive issues were brought up in the articles including birth control, parental irresponsibility, and psychological problems.

The school newspaper, the *Rainbow*, was designed to give students an opportunity to practice journalistic skills. It pledged to follow the First Amendment except "... language that ... substantially interferes with the requirements of appropriate discipline can be ... prohibited."

The principal of Woodhazel High School, Reynold Roberts, ordered both features cut. He objected to the interview with the pregnant girls feeling that their discussions of teen-age sexuality were inappropriate for a high school audience. In addition, he felt the article on divorce was not journalistically sound and might invade the privacy of certain students. Roberts did not tell the newspaper staff of his decision until after the paper had come back from the printer. At this point Warmeier decided to sue, claiming that the *Rainbow* was a "public forum" for students where legitimate expressions of journalistic effort can be read and discussed.

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##### CASE #2

The Ku Klux Klan planned a march through the streets of South Atlanta, a predominately African American community. Leaders of South Atlanta quickly passed laws prohibiting such a march, even though the First Amendment guarantees such marches if they are "peaceful." Civil liberty groups, such as the American Civil Liberties Union, found themselves supporting the rights of a group, the KKK, that pledges itself to depriving others of their civil rights.

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##### CASE #3

A radio station in New York broadcast a comedy routine by one of its DJs entitled "*Words I Can't Say On The Radio*." He repeatedly used seven words referring to the human body. A warning was given prior to the broadcast. The broadcast was aired in the middle of the day. The FCC found the broadcast to be offensive and fined the station's owner, the Pacifica Foundation. The Pacifica Foundation claimed that the 1934 Communications Act allowed such expression.

## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

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#### Student Handout: HYPOTHETICAL CASES cont.

##### CASE #4

The Amish community is a religious community that lives a very simple lifestyle. Many older Amish felt that the public schools, especially after the eighth grade, influenced their young people in a negative way. More schooling exposed their young people to "worldly" ideas that conflict with the traditional Amish values. Jonas Lader refused to allow his son Charles to attend ninth grade in the Indiana Public Schools. He preferred to teach Charles in the home. The state of Indiana tried various remedies to persuade the Laders but finally decided prosecution was the only way to deal with this problem.

The state of Indiana ordered Jonas Lader jailed and found him in contempt of court.

**Q.** Besides the First Amendment, what reasons can you think of for the Amish to wish their young people to have home schooling?

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##### CASE #5

Debbie Chartman's apartment was requested to be searched by the police in Cleveland, Ohio when they felt Chartman was sheltering a suspect involved in a bombing. Chartman called her attorney, who told her to keep the police out if they didn't have a warrant. The police showed Chartman a piece of paper, claiming it was a search warrant. Chartman seized the piece of paper because she knew that it was a worthless piece of paper. The police continues their "warrantless" search and found a box containing some sketches Chartman had done of a nude human body. In addition, the police also found a sexually descriptive book. Chartman was arrested and sentenced to a seven year term for possession of obscene materials.

The fourth Amendment to the U.S. Constitution protects people from violations against unreasonable searches and seizures in FEDERAL cases only. Since this was a purely state matter, the Ohio Supreme Court upheld the conviction.

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##### CASE #6

Eddy Woodson was reported to be a drug dealer. A federal agent had heard from an informant that a large shipment of narcotics was on its way to Woodson's house. The agent was also aware of the neighbors' complaints to the police about the numerous cars that cruised through the neighborhood at all hours of the night and stopped at the Woodson place. The police staked out the place and found that this was true. Yet, the police knew that would not be enough evidence to actually obtain a search warrant for Woodson's place. In addition, their informant also was considered unreliable. The police had to find another way to get evidence for a search warrant.

A police investigator asked the garbage collector to give her the garbage bags in front of Woodson's house. The trash collector picked up the garbage and before he put it with the rest of the neighborhood's garbage, gave it to the police investigator. The investigator then searched the garbage and found items related to the narcotics trade. This gave the police enough evidence for a search warrant. When the police entered Woodson's home, they discovered hashish and cocaine. Woodson was arrested. But the superior court of California dismissed the charges saying that the search of the garbage was illegal. The evidence gathered there must be thrown out.

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## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

Student Handout: HYPOTHETICAL CASES 1-11 cont.

#### CASE #7

The Amish community is a religious community that lives a very simple lifestyle. They believe that bright colors are worldly. Bright colors on a slow moving vehicle sign and the symbol itself would seem to put their faith in "*worldly symbols*" rather than in God. Many of the Amish in a rural Midwestern state believed this. Instead of using the sign, they put reflective tape on their buggies. The police then stopped the buggies and tagged them. The Amish pleaded not guilty to the charges. The courts would then find them guilty and fined them. The Amish would pay the fine and continue their practice of putting the tape on the buggies. This group was arrested again, and as repeat offenders the judges had no recourse but to sentence them to community service and jail. The Amish claimed that this state was the only state in the area that seemed to be actively prosecuting them for non-compliance. The state claimed that the law held no religious bias.

Q. What was the danger to the state?

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#### CASE #8

Tom Smith, an indigent, was charged in Alabama with having broken and entered a poolroom with the intent to commit a misdemeanor. This was a felony under the Alabama State law. Smith asked to have a lawyer present to assist in his defense. The state told Smith that a lawyer was only guaranteed by the court if the case involved a capital offense. Smith proceeded with the trial. He gave an opening statement, questioned the witnesses, and called witnesses on his own behalf. In the end, Smith was found guilty of the charge. He appealed the case.

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#### CASE #9

Shortly after the defendant's (Gondolez) arrest for murder, the defendant's lawyer arrived at the police station and asked to see the defendant Gondolez. In fact, his attorney was actually turned away at the police station because his client had not been charged formally. Gondolez requested repeatedly to see his lawyer during the preindictment hearing. The police denied his request. During the questioning, the defendant denied committing the crime. When the co-defendant was brought in, the defendant said "I didn't shoot Manuel, you did it." This showed that the defendant at least knew something about the crime. Later, the defendant confessed to being involved in the murder. At no time during the questioning did the police warn Gondolez of his right to refuse to answer questions. He was convicted of murder in the criminal court of Cook County because of the incriminating statements that the defendant made. The case was appealed.

## **RIGHTS OF THE ACCUSED**

### **CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY**

**Student Handout: HYPOTHETICAL CASES 1-11 cont..**

#### **CASE #10**

Tammy, a freshman in high school, was caught smoking in the bathroom by a teacher. This teacher took the student directly to the principal's office. Tammy denied smoking in the bathroom. The Assistant Vice Principal demanded that she open her purse. Mr. Hunter then took the purse and found the following: stack of one dollar bills, cigarette rolling papers, a small amount of marijuana, a number of empty plastic bags, and two letters that indicated that Tammy was dealing drugs. Based on the evidence the Assistant Vice Principal found in the purse, the juvenile court sentenced Tammy to one year probation. Tammy appealed the court's decision.

**Q. Why would the state want the charge to stick?**

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#### **CASE #11**

For the second time this semester, Tom's teacher sent him to the principal's office for starting a fight. The principal explained that because of Tom's disruptive conduct he was being suspended for three days. Tom replied that he didn't start the fight. He demanded a hearing in order to question his accusers and to have his friends testify on his behalf. After listening to Tom for ten minutes, the principal concluded that Tom was lying. He told Tom that he believed the teacher's report about the fight, that this was a school and not a courtroom, and that Tom had just had his hearing. Tom replied that he was no fool, that he knew he was being suspended without due process, and that he could sue the principal for violating his clearly established constitutional rights.

**Q . Can he?**

## **RIGHTS OF THE ACCUSED**

### **CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY**

#### **ANSWER KEY: Hypothetical Cases**

##### **CASE #1: *Hazelwood v. Kuhlmeier* (1988)**

The Supreme Court voted 5-3 in favor of the school and its principal, Robert Reynolds. The reasons the court gave were a) the **SPECTRUM** was not a public forum suitable for any student expression; b) the school's actions were reasonably related to legitimate educational concerns, and c) the principal did not feel the articles were within good journalistic standards and thus within good educational standards.

In the dissent, the justices said that a) the First Amendment protects school newspapers; b) it puts schools in the positions of imposing censorship which is not a lesson young people should learn.

##### **CASE #2: *National Socialist Party v. Skokie, Illinois* (1977)**

The American Civil Liberties Union (ACLU) joined with the Nazis to argue in favor of allowing the Nazis to march in Skokie, a predominantly Jewish community. The ACLU, calling it a classic First Amendment case, successfully defended the Nazis right to march. However, the Nazis never did march on Skokie. Instead they moved their march to downtown Chicago.

##### **CASE #3: *FCC v. Pacifica Foundation* (1978)**

The issue in this case was the radio stations airing of a monologue by George Carlin entitled "The Seven Dirtiest Words in the English Language." This monologue used the words repeatedly.

The Supreme Court ruled 5-3 against the radio station. Their reasoning was that radio was a "uniquely persuasive presence" in the lives of Americans, especially younger ones. They said that the action was NOT a form of censorship.

In the dissent, the justices said that the government ought not to be able to determine what is offensive and what isn't. The public must have that responsibility. Much of the contemporary literature, including the *Bible*, contains words or ideas restricted by the court.

##### **CASE #4: *Wisconsin v. Yoder* (1972)**

The Supreme Court ruled by a 6-1 margin in favor of Yoder, citing the long history of the Amish religion and the sincere belief that high school would endanger traditional Amish values. The majority rejected the claim that home schooling could be damaging to Amish children who leave the Amish community. The majority also felt that freedom of religion was more compelling than the state's need to provide education for its young people.

## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

#### ANSWER KEY cont.

#### **CASE #5: *Mapp v. Ohio* (1961)**

This is the famous case of *Mapp v. Ohio*. This case was historic because it applied to the states the principal known as the "exclusionary rule." This rule states that evidence seized illegally may not be entered in a criminal trial. This protection of the rights of the accused has been extremely controversial and has been somewhat restricted since *Mapp*.

The Supreme Court ruled 6-3 that the Cleveland police had violated Ms. Mapp's Sixth Amendment rights due to their illegal search. Ms. Mapp was exonerated.

Q. Would your opinion in *Mapp* be different if the police had made an error in their search, but the error was made in good faith? (in other words an honest mistake?)

#### **CASE #6: *California v. Greenwood* (1988)**

Billy Greenwood was the suspected drug dealer in this case. When the State of California ask the Supreme Court to review the case, the Supreme Court reversed the Superior Court of California's decision. In a 6-2 vote (Kennedy did not participate), the Court held that the Fourth Amendment does not prohibit the warrantless search and seizure of garbage that is left for collection on the curb in front of a house. The case was sent back to California, and with the evidence being legal, Billy Greenwood was found guilty.

#### **CASE #7: *Minnesota v. Hershberger* (1990)**

This case was returned by the U.S. Supreme Court to the Minnesota Supreme Court after the U.S. Supreme Court decided a similar case (*Smith*) that would have limited the rights of the Amish to use reflective tape. The U.S. Supreme Court instructed the Minnesota Supreme Court to decide the case, basing their decision on the reasoning of the *Smith* case. However, the Minnesota Supreme Court also used the Minnesota Constitution in its consideration of the *Hershberger* case. The Minnesota Constitution protects religious practices if the government has a lesser restrictive alternative that can be used to satisfy the same public need. In this case, the use of reflective tape was less restrictive than the slow-moving vehicle sign, and it was deemed effective. The Minnesota Supreme Court ruled for the Amish. The result of this case is that Minnesotans have stronger protection of their rights to practice their religions under the Minnesota Constitution than they do under the U.S. Constitution.

#### **CASE #8: *Gideon v. Wainwright* (1963)**

Gideon wrote to the Supreme Court of the United States believing that justice had not been served. He believed that he truly had the right to a lawyer. The Supreme Court took the case. The Supreme Court, applying the Sixth and Fourteenth Amendments felt that in all criminal prosecutions the accused should have the right of counsel. They also felt that an indigent defendant in a state court has the right to have counsel appointed for him. Of course, the court left it up to the state to define what an indigent person is.

Gideon went back to court. In his new trial with his court appointed lawyer, he was found not guilty.



## RIGHTS OF THE ACCUSED

### CONSTITUTIONAL TENSIONS: DEFENDANT'S RIGHTS V. RIGHTS OF SOCIETY

#### ANSWER KEY cont.

#### **CASE #9: *Escobedo v. Illinois* (1964)**

The United States Supreme Court in a 5-4 decision reversed the decision. The majority opinion said that because the police focused on the accused as a suspect rather than general investigation, not honoring the defendant's request to consult with his lawyer was denying his right to the assistance of counsel under the Sixth and Fourteenth Amendments. The court further said that the statements given to the police without the attorney should NOT have been admitted as evidence.

#### **CASE #10: *New Jersey v. T.L.O.* (1985)**

The Supreme Court said in this case that a student does not leave his/her Constitutional rights at the door when he/she enters school. The decision in which the justices concurred with in part and dissented in part said that the Fourth Amendment's prohibition of unreasonable searches and seizures does apply to the school. But, the school officials do not need to obtain a warrant to search a student under their authority nor do the school officials need to adhere to the requirement of "probable cause". In school, the "reasonableness standard" is the proper standard for determining the legality of searches by school officials. In other words, the search of the defendant in this case was not unreasonable. The evidence found in the purse could be admissible in court.



## **RIGHTS OF THE ACCUSED**

### **DRED SCOTT**

#### **Dred Scott by Jean Blomgren**

Interdisciplinary curriculum involving language arts, social studies, and art for sixth grade students. These skills will focus on the 13th Amendment.

#### **Students will:**

1. Use reading, writing, reference, and critical thinking skills to evaluate the protection offered by the 13th Amendment to Dred Scott.

#### **Materials needed:** Copies of: **Student Handout: DRED SCOTT**

**United States Constitution**

Access to library reference banks

Tagboard, Glue, Scissors, Magazines

**Time needed:** 7-8 days

**Grade level:** 6th grade

#### **Procedure:**

1. Spend 1-2 days in small groups to develop posters and/or paragraphs to compare and contrast: the *1850's* *1990's* in these areas:

- A. Clothing (from headgear to footwear)
- B. Home life (home, furnishings, and appliances)
- C. Recreation
- D. Chores/tasks
- E. Food or meal choices
- F. School life (Curricular and extra-curricular)
- G. Hairstyles

2. As a class read through the Preamble to the Constitution. In small groups of three, discuss vocabulary and ideas in the preamble. As a whole class, brainstorm the ideas of the small groups. (1 day)

## RIGHTS OF THE ACCUSED

### DRED SCOTT \_\_\_\_\_

#### Procedure cont.

3. Review the three branches of Government and the responsibilities of each. Discuss that a Constitution is a written plan of government.

Read through the 13th Amendment and discuss the vocabulary in each of the two sections.

Use reference books or the text books to determine the years the Preamble was written and when the 13th Amendment was adopted.

4. Begin a time line on the bulletin board to added to later:

1 \_\_\_\_\_ 2 \_\_\_\_\_ 3 \_\_\_\_\_ 4 \_\_\_\_\_ 5 \_\_\_\_\_  
YEARS

1. Columbus
2. Declaration of Independence
3. Constitution
4. Bill of Rights
5. 13th Amendment

5. Have students research the case of *Dred Scott v. Sandford*. They may use the Student Handout: DRED SCOTT provided or other readings including:

- A. Grolier Encyclopedia (1990) p. 268
- B. Colliers Encyclopedia (1989) p. 386
- C. Doctrine of Judicial Review Summary p. 156-157
- D. *Brown v. Board of Education* - Topeka, Kansas p. 175
- E. The Dred Scott Case p. 1-7
- F. Supreme Court case of *Dred Scott v. Sandford*

#### QUESTIONS TO ANSWER:

1. Explain the part or role of our state in the Dred Scott case.
2. What role did the Missouri Compromise play in the case?
3. In your words, write what Justice Taney said or wrote about the decision.
4. What was the ultimate ruling decided by the US Supreme Court in *Dred Scott v. Sandford*?

**RIGHTS OF THE ACCUSED**  
**DRED SCOTT** \_\_\_\_\_

**Procedure cont.**

**6.** Using what you found about Dred Scott's life, compare and contrast the "rights" of blacks in 1857 to 1991 in these areas:

- A.** Education
- B.** Employment
- C.** Careers and Opportunities

**7.** Choose five persons from the list and write, in your opinion, how the 13th Amendment affected their lives. Use facts of their lives.

- A.** Bryant Gumbel
- B.** Thurgood Marshall
- C.** Prince
- D.** Michael Jackson
- E.** Oprah Winfrey
- F.** Joe Louis
- G.** Magic Johnson
- H.** Kirby Puckett
- I.** Bo Jackson
- J.** Bill Cosby
- K.** George Washington Carver

**8.** If Dred Scott were living in the Metro area of Minnesota today, what might his life be like? 2-3 paragraphs

**RIGHTS OF THE ACCUSED**  
**DRED SCOTT** \_\_\_\_\_

**Student Handout: *DRED SCOTT V. SANDFORD***  
**60 U.S.393 (1857)**

Dred Scott was born a slave. He was taken by his owner, Dr. John Emerson, into Illinois and Minnesota where slavery was prohibited by the Missouri Compromise of 1820, which excluded slavery from portions of United States territories. After living there for a few years, they both returned to Missouri, which was a slave state. After his owner died, Scott sued his new owner, John Sandford, for his freedom, claiming that the time he spent living in a state that did not allow slavery made him a free man. He also claimed that as a free man, he was entitled to sue in the courts.

The Supreme Court disagreed. Ruling that slaves were property rather than citizens, the court said that Scott had no legal right to sue his owner in the courts. The Court also stated that because slaves were property, declaring Scott a free man would be a violation of his owner's fifth amendment right to property. Justice Taney, in his opinion, said that Congress had no power to prohibit slavery in the territory and that the Missouri Compromise was unconstitutional.

**RIGHTS OF THE ACCUSED**  
**EXPLORE AND KNOW** \_\_\_\_\_

**Explore and Know**  
**by Bernice Taylor**

An exploration of the Bill of Rights by students participating in analyzing Supreme Court cases in cooperative learning groups.

**Students will:**

1. Determine through reviewing cases if there is a need for the Bill of Rights.
2. Learn and demonstrate knowledge of Amendments 4, 5, 6, and 14.
3. Understand that the court interprets the meaning of the Bill of Rights by applying the protections to specific cases.

**Material needed:** Copies of:    **United States Constitution**  
                                                 **Student Handout 1: *GIDEON V. WAINWRIGHT***  
                                                 **Student Handout 2: *PALCO V. CONNETICUT***  
                                                 **Student Handout 3: *MAPP V. OHIO***

**Time needed:**        Three class periods

**Grade level:**        7th - 8th grades

**Procedure:**

1. Introduce students to the Bill of Rights, giving a brief history as to how and why the Bill of Rights were added to the Constitution.
2. Assign students to cooperative learning groups, four students in each group.
3. In cooperative learning groups, instruct the students to read **Student Handouts 1-3**, answer study guide questions, and come to a consensus as to how they believed the Supreme Court ruled in each case.
4. Analyzing one case at a time, each group will present its case to the entire class using the study guide questions.



**RIGHTS OF THE ACCUSED**  
**EXPLORE AND KNOW** \_\_\_\_\_

**Procedure cont.**

5. Following the presentation of all cases, conduct a question and answer session. This will allow for different opinions to be presented.
6. At the end of each presentation and discussion, tell the class the decision the Supreme Court rendered in the case, (see **TEACHER BACKGROUND: Case Summaries**) and any specifics that may clarify the decision for the students.
7. After all cases have been presented, ask students to write an essay entitled:  
*The Most Important Amendment(s) to me in the Bill of Rights is/are...*
8. Have students share their essays.

**RIGHTS OF THE ACCUSED**  
**EXPLORE AND KNOW** \_\_\_\_\_

**Student Handout 1: *GIDEON v. WAINWRIGHT* (1963)**

Defendant Gideon was charged in a Florida state court with breaking and entering a poolroom with intent to commit a misdemeanor, which is a felony under Florida law.

Gideon appeared in court without a lawyer because he couldn't afford to hire one. He asked the Florida state court to provide a lawyer for him, but the court refused saying the only time the state could appoint a lawyer for a defendant was when the defendant was charged with a capital crime.

The Florida court didn't provide a lawyer for Gideon. He stood before the jury and defended himself by presenting his own witnesses and cross examining the state's witnesses. At the end of the trial, Gideon was found guilty by the jury. He was sentenced to serve five years in State Prison.

Gideon finally appealed his conviction to the U.S. Supreme Court saying his constitutional rights had been violated.

**??? STUDY GUIDE QUESTIONS ???**

- I. What are the facts of this case?
  
  
  
  
  
  
  
  
  
  
- II. Do you believe the verdict decided by the lower courts should remain as first decided? Was it fair? Why? Why not?
  
  
  
  
  
  
  
  
  
  
- III. On what Amendment(s) do you believe the defendant/prosecution is basing the appeal?
  
  
  
  
  
  
  
  
  
  
- IV. What is your decision?

**RIGHTS OF THE ACCUSED**  
**EXPLORE AND KNOW** \_\_\_\_\_

**Student Handout 2: *PALKO v. CONNECTICUT* (1937)**

Palko was indicted in Fairfield County Connecticut for the crime of murder in the first degree. A jury found him guilty of murder in the second degree.

The sentence was for him to be confined in prison for life. However, the state of Connecticut discovered that there had been an error of law during Palko's trial. Evidence had been incorrectly excluded, and the jury had not received correct instructions as to the difference between first and second degree murder.

Therefore, the state of Connecticut with the permission of the judge who presided over the trial gave notice to Palko of its intent to appeal. The state could legally appeal this case because of a 1886 law which allowed appeals in all criminal cases with questions of law.

The state appealed the case, and Palko was retried. At the end of the second trial, Palko was found guilty but this time the verdict was murder in the first degree.

The court sentenced Palko to the punishment of death. Palko appealed the sentence claiming his constitutional rights had been violated. His argument was that retrying a defendant for the same crime subject him to double jeopardy in violation of the Fifth Amendment.

**??? STUDY GUIDE QUESTIONS ???**

- I. What are the facts of this case?
  
  
  
  
  
  
  
  
  
  
- II. Do you believe the verdict decided by the lower courts should remain as first decided? Was it fair? Why? Why not?
  
  
  
  
  
  
  
  
  
  
- III. On what Amendment(s) do you believe the defendant/prosecution is basing the appeal?
  
  
  
  
  
  
  
  
  
  
- IV. What is your decision?

**RIGHTS OF THE ACCUSED**  
**EXPLORE AND KNOW**

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**Student Handout 3: *MAPP v. OHIO* (May 23, 1957)**

In May 1957, three police officers went to Ms. Mapp's apartment because they had information that there was a person hiding in her home who they wanted to question in connection with a recent bombing. They also believed there was a large amount of gambling equipment in her apartment.

The officers arrived at Ms. Mapp's apartment, knocked on the door and demanded that she allow them entrance. Ms. Mapp phoned her attorney, and he advised her not to allow them in without a warrant.

About three hours later, four more officers arrived at Ms. Mapp's apartment. They knocked on the door. When Ms. Mapp didn't immediately open the door, the door was opened by force, and the police entered the apartment.

Ms. Mapp's attorney arrived at her apartment, but the policemen refused to let him see her or enter the house. Ms. Mapp demanded the police to let her see a warrant. Ms. Mapp grabbed a piece of paper that the officer held up claiming it to be a warrant and placed it in her bosom. The officer struggled with Ms. Mapp to recover the piece of paper. In the struggle, the police managed to handcuff her.

After being handcuffed, Ms. Mapp was taken upstairs to her bedroom where the policemen searched a dresser, chest of drawers, closet, and suitcase. The second floor and a trunk in the basement were searched. During their search they discovered obscene materials (nude pictures, etc.).

Ms. Mapp was tried and convicted for having obscene materials and sentenced to serve seven years in prison. She appealed to the Supreme Court claiming her Constitutional rights had been violated.

**??? STUDY GUIDE QUESTIONS ???**

- I. What are the facts of this case?
- II. Do you believe the verdict decided by the lower courts should remain as first decided? Was it fair? Why? Why not?
- III. On what Amendment(s) do you believe the defendant/prosecution is basing the appeal?
- IV. What is your decision?

**TEACHER BACKGROUND: Case Summaries**

***Gideon v. Wainwright, 372 U.S. 335 (1963)***

The Supreme Court agreed with Mr. Gideon, stating that *"any person hauled into our Court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him."*

***Palko v. Conneticut, 302 U.S. 319 (1937)***

The Supreme Court affirmed Palko's first degree murder conviction. Asking the question, Does this violate those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions? the Supreme Court said no. *"The state is not attempting to wear the accused out by a multitude of cases with accumulated trials. It asks no more than this, that the case against him shall go on until there shall be a trial free from the corrosion of substantial legal error. This is not cruelty at all..."*

***Mapp v. Ohio, 367 U.S. 643 (1961)***

Ms. Mapp's conviction was overturned. The Supreme Court said that the Fourth Amendment warrant requirements must be complied with by state as well as federal agents. This case applied Fourth Amendment criminal protections to all trial courts in the country.



**RIGHTS OF THE ACCUSED**  
**INTRODUCTION TO THE BILL OF RIGHTS** \_\_\_\_\_

**Introduction to the Bill of Rights**  
**by Phyllis Brostrom**

**Students will:**

1. Think about their freedom and what freedom means.
2. Evaluate the need for rules.
3. Evaluate the importance of individual rights.

**Materials needed:** Copies of: **Student Handout: THE ALIEN**  
**Student Handout: CHOOSE THE AMENDMENT**  
**Student Handout: CATEGORIES OF RIGHTS**  
magazines  
scissors

**Time needed:** two class periods

**Grade level:** 4th - 6th grades

**Procedure:**

1. Have the students find a picture at home or in class that reminds them of their freedoms or rights as a U.S. citizen.
2. Have each student show and explain their picture
3. Discuss the need for rules to enforce their rules.
4. Discuss the importance of individual rights.
5. Brainstorm a list of rights. Use categories such as students, teachers, cooks, janitors, parents, etc.
6. Talk about which of these rights is the most important. What would happen if a particular one was taken away? If possible, take one of them away for a short period of time.

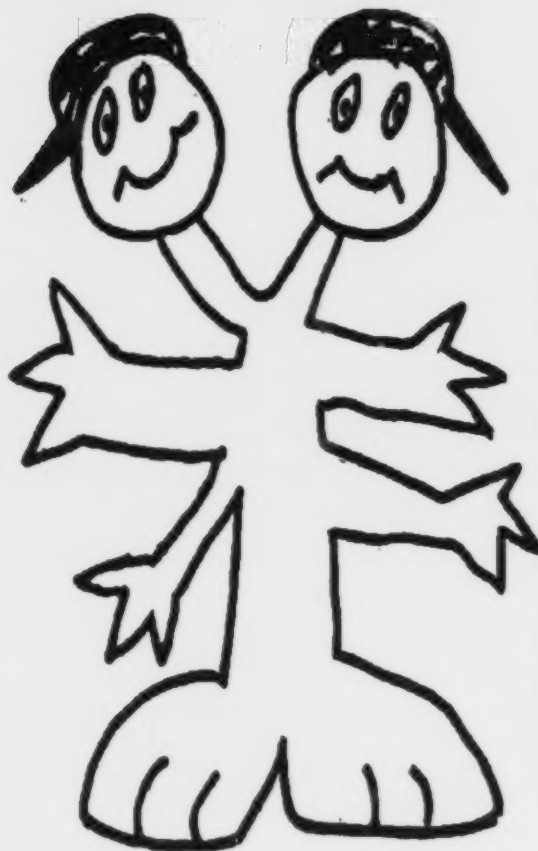
**RIGHTS OF THE ACCUSED**  
**INTRODUCTION TO THE BILL OF RIGHTS** \_\_\_\_\_

**Procedure cont.**

7. As an optional activity, discuss the lives of people who have defended individual rights throughout history such as Dr. Martin Luther King, Jr. and Susan B. Anthony. This could be expanded into various projects including reports or letters to particular individuals of their choice, telling them that their lives made a difference.
8. Have the students save their pictures to be used for a bulletin board display or collages that are put together in cooperative groups. Or the pictures could be put together into booklets.
9. Have the students develop a Freedom Journal. Each day have them write a paragraph explaining a freedom they have enjoyed that day. Complete **Student Handout: THE ALIEN**.
10. Have students complete **Student Handout: CHOOSE THE AMENDMENT** as a way to link freedoms and rights with the guarantees of the Bill of Rights. Discuss
11. In cooperative groups, have each group select an example (from Step 10 or a different example) which they will use in a short dramatization. First, have them act it out showing an infringement on the right. Second, have them act it out the way it would happen according to the Bill of Rights.
12. Thoroughly discuss each situation with the entire class.
13. Have students complete **Student Handout: CATEGORIES OF RIGHTS** and discuss.

**RIGHTS OF THE ACCUSED**  
**INTRODUCTION TO THE BILL OF RIGHTS** \_\_\_\_\_

**Student Handout: THE ALIEN**



Hi! My name is Sthgir! I am from the planet Noitutitsnoc! On my planet we have noticed that in this country of the United States the humans have too many freedoms.

On a separate piece of paper make a list of those freedoms.

Each month we are going to take away one of those freedoms from you greedy humans. Number them in the order you would like them to be taken away. (Number one will be the first one we will take away.)

P.S. What do you notice about my name?

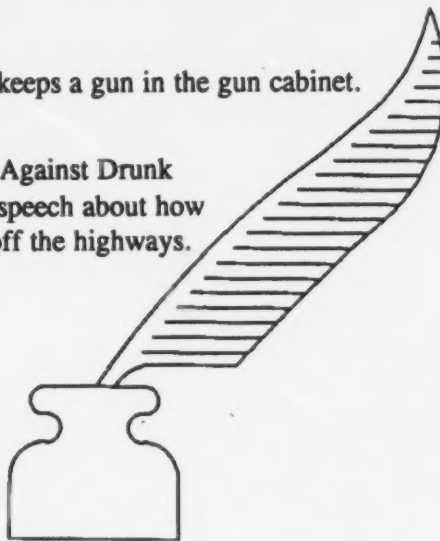
## RIGHTS OF THE ACCUSED

### INTRODUCTION TO THE BILL OF RIGHTS \_\_\_\_\_

#### Student Handout: CHOOSE THE AMENDMENT

Below write the number of the Amendment that guarantees the right described in the situation.

- \_\_\_\_\_ 1. You may go to the church you like best on any day of the week.
- \_\_\_\_\_ 2. A person in jail is fed a decent meal, and his jail cell is clean.
- \_\_\_\_\_ 3. A poor street person is accused of a crime and cannot afford an attorney.
- \_\_\_\_\_ 4. A jury is chosen to hear a case.
- \_\_\_\_\_ 5. Someone is charged with a crime, and the trial is set for the earliest possible date on the court calendar.
- \_\_\_\_\_ 6. When a person is on trial and the prosecuting attorney asks him a question, he refuses to answer.
- \_\_\_\_\_ 7. Your mother writes a letter to the editor of the local paper saying that the police should be tougher on teenage drinking.
- \_\_\_\_\_ 8. When a young man is boarding the plane, a police officer stops him and says he must be searched.
- \_\_\_\_\_ 9. A person enjoys the woods and keeps a gun in the gun cabinet.
- \_\_\_\_\_ 10. A member of MADD (Mothers Against Drunk Driving) is in the park giving a speech about how drunk drivers need to be taken off the highways.



## RIGHTS OF THE ACCUSED

### INTRODUCTION TO THE BILL OF RIGHTS \_\_\_\_\_

#### Student Handout: CATEGORIES OF RIGHTS

In 1787 the U.S. Constitution was written to create and regulate government so that citizens of the United States would be free. Several people of the time felt this was not enough. They felt a list of basic rights also needed to be included. They felt so strongly about this that they would not sign the Constitution until the Bill of Rights was added. This was done in 1791. The Bill of Rights can be broken down into three categories. These categories are freedom of expression, rights of the people, and criminal procedure.

|                                                                                   |                                                                                   |                                                                                     |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |  |
| A. Freedom of Expression                                                          | B. Rights of the People                                                           | C. Criminal Procedure                                                               |

*Match the amendment with the category by writing the letter of the category on the blank before the amendment.*

\_\_\_\_\_ 1st - freedom of speech, press, religion, the right to petition and to peacefully assemble

\_\_\_\_\_ 2nd - right to keep and bear arms

\_\_\_\_\_ 3rd - no soldier shall, in time of peace, be quartered in any house

\_\_\_\_\_ 4th - right against unreasonable search and seizures

\_\_\_\_\_ 5th - right to remain silent, no double jeopardy

\_\_\_\_\_ 6th - right to a speedy trial, right to an attorney

\_\_\_\_\_ 7th - right to jury trial in matters over \$20

\_\_\_\_\_ 8th - excessive bail cannot be required nor cruel and unusual punishment imposed

\_\_\_\_\_ 9th - rights other than those listed

\_\_\_\_\_ 10th - rights of the states



## RIGHTS OF THE ACCUSED

### PEOPLE'S RIGHTS CHANGE WITH THE DECISIONS OF THE COURTS\_\_\_\_\_

## People's Rights Change With the Decisions of the Courts

by Dennis Roisum

Students will be asked to analyze the Bill of Rights (4th, 5th, 6th and 14th Amendments) and to look at historic and recent court decisions to see if individual rights have been expanded or limited by the courts decisions. This will be done by class discussion and small group activities involving case handouts of historic cases and cases from recent rulings as printed in newspapers.

### Students will:

1. Understand the purpose of the 4th, 5th, 6th and 14th Amendments.
2. Understand what is meant by *conservative* decision and how it limits peoples rights (and expand power of government).
3. Understand what is meant by a *liberal* decision and how it expands rights of people (and limits power of the government).
4. Be able to read a court decision and analysis to determine if rights of people are expanded or limited.

**Materials needed:** Copies of: 4th, 5th, 6th, and 14th Amendments

(See Appended Materials)

**Student Handout: COURT DECISIONS**

**Student Handout: CASE ANALYSIS WORKSHEET**

**Time needed:** 1 - 2 class periods

**Grade level:** 9th grade

### Procedure:

1. Review Amendments 4, 5, 6, and 14th.
2. Discuss Supreme Court decision as to how they are made.
3. Introduce the phrases (a) *conservative court* and (b) *liberal court* and discuss.
4. Distribute **Student Handout: COURT DECISIONS** for students to read.

## **RIGHTS OF THE ACCUSED**

### **PEOPLE'S RIGHTS CHANGE WITH THE DECISIONS OF THE COURTS\_\_\_\_\_**

**Procedure cont.**

**5. Small Group Activity: Distribute Student Handout: CASE ANALYSIS WORK-SHEET**

**6. Once small group work is concluded, discuss as a class.**

#### **SUGGESTED ADDITIONAL WORK:**

Find and cut out articles from the newspaper on court rulings or have students bring these to class. Analyze these and compare to past ruling in regard to conservative or liberal courts.

## **RIGHTS OF THE ACCUSED**

### **PEOPLE'S RIGHTS CHANGE WITH THE DECISIONS OF THE COURTS\_\_\_\_\_**

#### **Student Handout: COURT DECISIONS**

##### **Case #1: *Miranda v. Arizona* (1966)**

In Phoenix, Arizona in the 1960's an 18 year-old-girl was kidnapped and raped. Ernesto Miranda was accused of the crime. Ten days after the rape Miranda was arrested and identified by the 18 year old girl in a lineup. Following this, the police interrogated and questioned Miranda for 2 hours. The two police obtained a written confession that was used as evidence in a trial which found Miranda guilty.

Miranda and his attorney appealed the verdict, and the case ended up in the Supreme Court. Miranda argued that he did not have counsel (lawyer) before interrogation and that he had not been warned that he had the right to remain silent and not answer questions that were put to him.

The court ruled in favor of Ernesto Miranda.

##### **Case #2: *Duncan v. Louisiana* (1968)**

Duncan was convicted of simple assault in the state of Louisiana. This was considered a misdemeanor in Louisiana. The maximum punishment in this state for that crime was two years in prison and a \$300 fine. Duncan was sentenced to 60 days in jail and fined \$150. The verdict was determined by a judge although Duncan asked for a jury trial.

Duncan later appealed the verdict and the case reached the Supreme Court. Duncan felt that he was unjustly found guilty because he was denied the right to a trial by jury.

Forty-nine of the 50 states allow a person to have a jury trial when punishment could involve 2 years and \$300. In the Federal Court system, minor offenses are considered those punishable by no more than 6 months and \$500.

The Supreme Court ruled that Duncan should have been allowed to have a jury trial.

##### **Case #3: *Boyd v. U.S.* (1886)**

The first important case involving rights came in the year 1886. George and Edward Boyd, who were merchants in New York, had agreed to sell the United States government plate glass of a certain quality. The glass was to be used in construction of a Federal Court House and a post office in the city of Philadelphia. Because it was to be used for construction of Federal government buildings, the government agreed to allow the Boyds not to pay the importation tax they would regularly pay. The Boyds, however, imported far more plate glass than needed for construction of the government buildings and did not pay the importation tax on any of the extra plate glass. The government brought action to have the Boyds pay tax on the plate glass not used in government construction. A New York court ordered that they turn over any papers dealing with the importation of plate glass. The Boyds objected to turning

## RIGHTS OF THE ACCUSED

### PEOPLE'S RIGHTS CHANGE WITH THE DECISIONS OF THE COURTS\_\_\_\_\_

#### Student Handout: COURT DECISIONS cont.

##### Case #3: *Boyd v. U.S.* (1886) cont.

papers over to the government for the purposes of determining the amount of the tax. The state of New York, however, seized the papers.

The case reached the Supreme Court and was overturned. The ruling was in favor of the Boyd's.

##### Case #4: *Mapp v. Ohio* (1961)

Three policemen in Cleveland, Ohio were looking to question a certain person regarding a bombing that had taken place. On May 23, 1957 they went to the home of Ms. Mapp because they had word that this person had been seen in that place. Without a search warrant the policemen forced their way in. Upon entering and searching the house, they found obscene materials that were used to convict Ms. Mapp of "*having in her possession certain lewd and lascivious books, pictures, and photographs.*"

The case was later overturned by the Supreme Court.

##### Case #5: *U.S. v. Wade* (1967)

In 1964 in Eustace, Texas, a man entered a bank while wearing a small strip of tape on each side of his face to cover his identity. He pointed a pistol at the cashier and the vice president who were the only 2 people in the bank at the time. He asked the cashier to fill a paper bag with money, which she did. He then left the bank and drove off with a person who was waiting in a car.

Mr. Wade was arrested for this bank robbery. F.B.I. agents, without notifying Wade's lawyer, placed Wade in a lineup with six other people. The two bank employees were asked to pick out the robber as the suspects lined up with tape on their faces and were asked to say, "*Put the money in the bag.*"

Both picked out Wade as the robber. He was found guilty but later appealed the case to the Supreme Court on the basis that he was asked to incriminate himself. The Supreme Court found that neither appearing in a lineup nor being asked to speak violated the right against self-incrimination.

##### Case #6: *Sheppard v. Maxwell* (1966)

In the early 1960's, Mrs. Sheppard was murdered. Her husband, a well known medical doctor, was the leading suspect. Mr. Sheppard was brought to trial. The case received a great deal of publicity before and during the trial because of the prominent family involved. The media seemed to go against Mr. Sheppard because of his lack of cooperation: he refused

## RIGHTS OF THE ACCUSED

### PEOPLE'S RIGHTS CHANGE WITH THE DECISIONS OF THE COURTS\_\_\_\_\_

#### Student Handout: COURT DECISIONS cont.

##### Case #6: *Sheppard v. Maxwell* (1966) cont.

to take a lie detector test, and generally refused to do anything to help the media report the case.

During the trial, the judge failed to conduct the proceedings in a solemn fashion. Rather, the media caused a "*carnival atmosphere*". After the testimony ended, the jury left the court room and deliberated for 5 days. The jurors were not allowed to receive incoming calls but they could make calls out and talk with almost anyone. No records were kept of the calls. The jurors agreed that they could have obtained information that was not presented at the trial.

The jury returned a verdict against Mr. Sheppard.

The case was appealed to the Supreme Court because of the way the jury trial was conducted. The Supreme Court reversed the decision of the lower court and ruled in favor of Mr. Sheppard. The Supreme Court said that the lower court judge had not done his job to ensure a fair trial.



**RIGHTS OF THE ACCUSED**

**PEOPLE'S RIGHTS CHANGE WITH THE DECISIONS OF THE COURTS**\_\_\_\_\_

**Student Handout: CASE ANALYSIS WORKSHEET**

**STUDENT NAME:**

(Students are to discuss in groups but **each** must complete a written case analysis.)

**NAME OF CASE:** \_\_\_\_\_

**AMENDMENT(S) INVOLVED:** \_\_\_\_\_

**SUPREME COURT'S DECISION (IN YOUR WORDS):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS DECISION (*LIMITED, EXPANDED*) THE RIGHTS OF INDIVIDUALS WHILE IT (*LIMITED, EXPANDED*) THE POWER OF THE GOVERNMENT. EXPLAIN WHY YOU SAY THE DECISION IS *CONSERVATIVE* OR *LIBERAL*.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NAME OF CASE:** \_\_\_\_\_

**AMENDMENT(S) INVOLVED:** \_\_\_\_\_

**SUPREME COURTS DECISION (IN YOUR WORDS):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS DECISION (*LIMITED, EXPANDED*) THE RIGHTS OF INDIVIDUALS WHILE IT (*LIMITED, EXPANDED*) THE POWER OF THE GOVERNMENT. EXPLAIN WHY YOU SAY THE DECISION IS *CONSERVATIVE* OR *LIBERAL*.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **RIGHTS OF THE ACCUSED**

### **PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE**

## **Presenting Constitutional Issues in a Non-adversarial Mode**

**by Marylee Martig Johnson**

### **Students will:**

1. Learn about the Fourth, Fifth, Sixth, Eighth Amendments through research, review, and application in a friendly competition.
2. See and seek alternative hypotheses, values, and problem solving approaches.
3. Note and respect different points of view.
4. Analyze concepts into components, understand multiple relations among ideas, differentiate concepts and concerns.

**Materials needed:** Copies of: **Student Handout: INTRODUCTION**  
**Student Handout: GROUP CHECK OF THE BASIC FIVE**  
**Student Handout: YOU HAVE THE RIGHT TO ASSEMBLE HERE!**  
**Student Handout: PARTNERS-IN-CRIME**  
**Student Handout: RAP 2 THE BILL O RIGHTS**  
Deck of playing cards

**Grade level:** 9th - 12th grades

### **Procedure:**

1. Introduce students to the amendments of the Bill of Rights that provide protection in criminal prosecutions. These amendments are the Fourth, Fifth, Sixth, and Eighth Amendments.
2. Have students number off so that each student has a number of one of these four amendments.
3. Assign the following questions to the students. (**Student Handout: INTRODUCTION**)
  - A. What does your right guarantee?
  - B. Why is your right important?
  - C. Give an example from history of a case involving your right.
  - D. Give a personal or contemporary example of your right.

## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

#### Procedure cont.

4. Have students meet in groups (all Fourth Amendment students meet together, etc.) to make sure that everyone on the team pursues and researches the questions. Assign a specified amount of time depending upon the degree of research and complexity of the answer desired. Students may wish to use a law library for research. (Contact the county law library or a local law school.)
5. After research is completed, teacher asks students to report their findings by calling one of the numbers. Students with the number called share information from group exchange-work.
6. Review lesson by having students complete **Student Handout: GROUP CHECK ON THE BASIC FIVE** and **Student Handout: YOU HAVE THE RIGHT TO ASSEMBLE HERE**. Discuss.
7. Explain to students that the enforcement of these rights sometimes limits the ability of the police officers to *"put the guilty parties away."* For example, if police officers do not obtain a search warrant as required by the Fourth Amendment, the evidence seized may be inadmissible in court. Tell students that they are going to explore some of these issues.
8. Have students individually think to themselves on a topic of controversy concerning crime. (They may select their topics from the list provided in **Student Handout: PARTNERS-IN-CRIME** or produce one of their own from newspaper stories, current cases, quotations, etc.)
9. After giving some thought to the issue, pair students together into **"Partners-in-Crime"** to discuss the issues.
10. Have students share their thoughts and exchange process with the entire class. Note any variations on positions on the issues. Discuss.
11. An alternative method of presenting the issues and involving the students in discussion is with *"It's in the Cards! Evaluation Strategy."* Have students select a card from a deck of cards. They are assigned perspectives by receiving a card with a certain suit. For example, in evaluating different methods of dealing with crime (cultural attitudes across time and place) have students select from:
  - A. Clubs-representing strong law enforcement, crime control
  - B. Spades-representing Middle East, eye for an eye
  - C. Diamonds-representing individual rights and due process
  - D. Hearts-representing Native Americans and inter-connectedness

## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

#### Procedure cont.

12. Have students move to a corner of the classroom representing a pre-determined suit. Within their groups, students discuss and evaluate the model presented.
13. Have the groups from each corner share their ideas with the others. All students should listen to and be able to paraphrase the ideas from the other corners. Discuss.
14. Explain the exclusionary rule to students. Tell them that in order to regulate the behavior of the police, the U.S. Supreme Court has decided that evidence obtained in violation of the Bill of Rights will be excluded from the trial. Have students discuss whether the exclusionary rule is a good idea.
15. Encourage students to consider other perspectives. To do this, use an inside-outside circle. Students stand in pairs in two concentric circles. The inside circle faces out. The outside circle faces in. The students share their perspectives (position statements) with their opponents. Students rotate to listen to new perspectives. Perspectives that can be used are: the perspective of the victim, the perspective of the defendant, the perspective of the police, the perspective of the public.
16. Have students consider complicated issues concerning the application of the rights of the accused. This can be done through a "*Judicial Jigsaw*." Divide the class into the same number of groups as you have issues. Each group is assigned an issue. The group members become "experts" on the issue by researching and interviewing experts. Each member is then grouped with a member from each of the other groups. In their new group configurations, the students share their expertise with their classmates. Review as a large group. An example of issues concerning the Fourth Amendment would be:
  - A. Should there be an expanded category of exceptions to the warrant requirement, which would allow police officers more latitude in solving crimes?
  - B. Should the level of suspicion necessary to justify police investigation be reduced?
  - C. Should the requirement of probable cause be eliminated?
  - D. Who determines what the definition of reasonable is? What is its current meaning? When is it used?
17. Conclude the lesson by have students develop a "*Bill of Wrongs*." Ask students:
  - A. Wouldn't it be easier if we had a Bill of Wrongs?
  - B. What would your Bill of Wrongs look like? Your group may consider a broad bill or one which only encompasses a classroom or a group in the classroom.

## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

#### Procedure cont.

C. On what could your group agree? What did it discard? What are the positives and the negatives in your proposal?

D. Now using the Student Handout: Rap 2 the Bill o Rights as a guide, present your Bill of Wrongs in musical style to the class.

E. How do the Bills of Wrongs compare?

18. For more information on cooperative learning methods, consult *Learning Together and Alone: Cooperation, Competition, & Individualization* by D.W. Johnson and R. Johnson, published by Prentice-Hall.



**RIGHTS OF THE ACCUSED**

**PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE** \_\_\_\_\_

**Student Handout: INTRODUCTION**

Answer the following questions:

A. What does your right guarantee?

B. Why is your right important?

C. Give an example from history of a case involving your right.

D. Give a personal or contemporary example of your right.

## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

#### Student Handout: GROUP CHECK ON THE BASIC FIVE

What protection does the Bill of Rights offer Americans?

Picture this: It's the last two minutes of a TV thriller. The police have chased and caught the crook. One officer jumps out and snaps on the handcuffs. The other says, "*Read him his rights*"

The "rights" we hear about on shows like this are protected by the Bill of Rights--the first Ten Amendments to the Constitution. The table below summarizes some of these Amendments. After reading them here, you might want to check the original wording in a textbook or almanac.

#### HOW THE BILL OF RIGHTS PROTECTS US

| AMENDMENT     | WHAT THE AMENDMENT GUARANTEES                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>First</b>  | This amendment guarantees your right to <b>worship</b> as you choose and <b>express</b> your ideas freely. It also protects your right to <b>meet</b> with others in a group. And it protects your right to <b>complain</b> about the way the government acts.                                                                                                                                                                          |
| <b>Fourth</b> | Under this amendment, you and your <b>house</b> are protected against "unreasonable searches and seizures" by the government. Usually, if the police want to search for evidence of a crime, they must get a <b>warrant</b> (permission) from a court.                                                                                                                                                                                  |
| <b>Fifth</b>  | The Fifth Amendment forbids the government to put you on trial for a capital (serious) crime unless a <b>grand jury</b> has accused you. It forbids the government to try you <b>twice</b> for the same crime. It protects your right to be <b>silent</b> if you're asked to testify against yourself. And it bars the government from taking your life, liberty, or property without <b>due process of law</b> - a fair legal hearing. |
| <b>Sixth</b>  | If you are arrested, this amendment guarantees your right to <b>know</b> what crime you are accused of. It also protects your right to a <b>lawyer</b> and a <b>speedy trial</b> .                                                                                                                                                                                                                                                      |
| <b>Eighth</b> | This amendment forbids the government to ask for unreasonable bail. (Bail is money a defendant gives a court as a pledge that he or she will come back for trial.) This amendment also bars the government from sentencing a convicted criminal to <b>cruel and unusual punishment</b> .                                                                                                                                                |

## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

Student Handout: GROUP CHECK ON THE BASIC FIVE cont.

*As a group come to a consensus and write the answer to each question on the line provided.*

1. What are the first Ten Amendments to the Constitution called?  
\_\_\_\_\_
2. What does the Fourth Amendment protect you against?  
\_\_\_\_\_
3. Which amendment bans cruel and unusual punishment?  
\_\_\_\_\_
4. Under the Fifth Amendment, which body must accuse you before you can be put on trial for a capital crime?  
\_\_\_\_\_
5. Which amendment says an accused criminal has a right to a lawyer?  
\_\_\_\_\_
6. True or False A person can be tried twice for the same crime.  
\_\_\_\_\_
7. On trial for burglary, Carson refuses to answer question about his conduct. Which amendment protects his right to refuse?  
\_\_\_\_\_
8. Mo is charged with stealing a camcorder. The court set his bail at \$50,000. Which amendment is violated by this high bail?  
\_\_\_\_\_

As a group of four, write an additional amendment that you think should be included in the Bill of Rights.

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## **RIGHTS OF THE ACCUSED**

### **PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE** \_\_\_\_\_

#### **Student Handout: PARTNERS-IN-CRIME**

##### *Areas of controversy in crime and possible topics for consideration:*

1. Should we trust juries?
2. Should we trust the police? What is police discretion? What about entrapment? Is it necessary?
3. Is the Supreme Court too conservative? Too liberal?
4. Capital punishment v. rehabilitation. Who is killing whom?
5. Are sentencing guidelines an improvement?
6. Is crime determined by culture? Does culture determine crime?
7. Should the accused be able to confront accusers?
8. Should the right to counsel be applied in all situations?

(Adapted: Scholastic Search Skillmaster, May 1989)

## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

#### Student Handout: YOU HAVE THE RIGHT TO ASSEMBLE HERE!

Using the Bill of Rights, on a separate sheet of paper, state if the following situations are *constitutional* or *unconstitutional*. Judge the situation only on what appears in the statements. Do not assume something was not done on the case. If you decide the situation is unconstitutional, explain your reasoning. Cite the Amendment. Discuss whether you agree.

1. The local police enter a house with an official search warrant, stating that they are to search the house for anything which might be illegal, since the neighbors are suspicious of illegal acts. They have reported lights burning in the house late into the night and "*something fishy going on.*"
2. A man, actually innocent of murder, is indicted by a grand jury, brought to trial, convicted and executed in the gas chamber.
3. Stan Smith is tried for murder and is acquitted. Three months later a star witness for the defense confesses that he lied at the trial, and that actually he saw Stan Smith commit the crime. Smith is brought back to trial, and this time convicted and sent up for life.
4. A man is accused and indicted for the brutal hatchet slaying of a beloved and revered art teacher. The county attorney decides to hold the case up for a while because it is feared that the enraged public would cause such pressure as to make it impossible for a fair trial. The accused is held in jail for one year and then tried after the public cools off. He is convicted and given life imprisonment.

**As a group**, creatively and cooperatively write one hypothetical situation which tests one of the amendments in the Bill of Rights.

Adapted from the *American Dream* Activities, Scott, Foresman & Co.



## RIGHTS OF THE ACCUSED

### PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE \_\_\_\_\_

#### Student Handout: RAP 2 THE BILL O RIGHTS

When our grand Constitution was finally completed,  
A few of the framers said, "Wait! More is needed!"  
"This tells very well what the Congress can do,  
Let's write 'bout the rights of the people, though, 2!"  
And when the document passed 2 the states,  
A few citizens said, "Hold on, wait!  
This Constitution is not the solution,  
We want rights we earned in the Revolution!"  
The Federalists replied 2 the unsatisfied,  
"This Constitution is fine, everybody chill out!  
Why bother 2 list every obvious right,  
Like, "A man's free 3 sleep if he wants 2 at night?"  
The Antifeds countered, "We don't wanna guess  
'Bout freedom of speech and religion and press!"  
The Quakers agreed, "Don't mock fears of oppression,  
We used 2 get whipped 4 religious expression!"  
So a man named James Madison, in black tights,  
Decided 2 list people's most basic rights.

In the very first session Congress ever had,  
They gave a good listen 2 old Jimmy Mad.'  
They went through his points in the House and Senate;  
They picked out a dozen, approved them, and then it  
Was time 4 the states, who chose 10 that they ratified.  
When they were passed, Jimmy must have been gratified  
Cause this "Bill of Rights" then became, in conclusion,  
The first 10 Amendments 2 our own Constitution!  
The Amendment that's first grants free speech 2 each voice,  
And the freedom 2 worship the god of your choice.  
To gather in peace 2 express your beliefs,  
Or talk 2 the folks in command 'bout your beefs.  
The second says local defense can't be stifled;  
It guarantees people's new right 2 bear rifles.  
The third says troops can't stay on your floor;  
It outlaws that—even during a war.  
The police can't search your house, says number 4,  
'Less they show you a warrant 'fore they come through your door.  
Five through 8 concern the sort  
Of rights you need when you're in court.  
They gotta tell you your crime in a hurry,  
And bring you 2 trial with lawyer and jury.  
If they put you in jail, they can't set unfair bail;  
Though punishment may be feared, it can't be brutal or weird.  
Number 9 says of the rights the Constitution ignores,  
"Any right we didn't list, rest assured that it's yours!"  
The 10th Amend saved room 4 interpretation,  
Each state still has power in shaping the nation.

**RIGHTS OF THE ACCUSED**  
**PRESENTING CONSTITUTION ISSUES IN A NON-ADVERSARIAL MODE** \_\_\_\_\_

**Student Handout: RAP 2 THE BILL O RIGHTS cont.**

In the years since then, more's been added 2 10.  
New rights 'been demanded; the Bill's been expanded.  
After the Union won the Civil War,  
Three new Amedments said, "Slavery no more!"  
Numbers 13 through 15 state, "In every case,  
Citizens are equal, regardless of race!"  
Amendment 19 is the next 2 note;  
It grants all women suffrage--and that means they can vote!  
Amendment 26 is our most recent 1;  
It brought the age of voting down from 21!

And the Bill of Rights will keep on defending  
Your freedom 2 make your own happy ending.

Billy Aronson

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Whose Rights Are Violated?**  
**by Tom Idstrom**

**Students will:**

1. Learn the meaning and application of Amendments 1, 4, 5, 6, 8, and 14.

**Materials needed:** Copies of **Student Handouts 1-8:**  
**Student Handout: ANSWER SHEET**  
**1st, 4th, 5th, 6th, 8th and 14th Amendments**  
(See Appended Materials)

**Time needed:** 1 1/2 to 2 class periods

**Grade level:** 9th - 12th grades

**Procedure:**

1. Students will have studied Amendments 1, 4, 5, 6, 8, and 14 through lecture and a case study approach prior to this assignment/test.
2. Students will be paired into cooperative learning groups. Each student will read the assigned narrative and then consult with his/her partner as to which amendments have been violated in the narrative. These will be recorded on the **Student Handout: ANSWER SHEET** and an explanation given as to how the amendment or amendments were violated. (See **ANSWER SHEET**)

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 1: BILLY BUD'S GIRLS**

Billy Bud is a two bit pimp and gangster. Billy is a 23 year-old drop out of Evanston Township High School.

Billy found his true calling by soliciting some young lasses to work a call girl service for him. Billy was a successful pimp who drove a big Lincoln, wore Brooks Brothers suits and alligator shoes. However, Billy was a brutal little monster. He beat his girls if they didn't produce enough money for their services.

Finally, Tasha Tinwell decided she had had enough from Billy Bud. She went to the Vice Squad and the Vice Squad planned a sting against Billy Bud. The Vice Squad, using the wiretap evidence, picked up Billy Bud and arrested him. The Miranda warning was read to Billy, and he agreed to answer some questions voluntarily. Suddenly during the questioning, Billy Bud decided he no longer would answer any questions. The police ignored Billy's request to stop and relentlessly pursued their questioning.

During Billy Bud's trial, the newspapers printed the names of the jurors in the newspaper with their addresses. The news people also interviewed the jurors while the trial was in progress.

Billy Bud was convicted of solicitation of prostitutes and assault and battery.

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 2: THE FLAG SALUTE**

Burdsville High School instituted a policy of having all students stand and say the Pledge of Allegiance to start class on Mondays. Some students failed to stand and say the Pledge, and Principal J.J. Brandywine ordered them to his office.

J.J. admonished the young people saying, *"You little scum bags are unpatriotic, no good, insipid, trivial, inane, little hypocrites. Either love the flag or you will face immediate suspension from school."*

The good citizens of the area supported J.J. and called for the suspension of the students. The parents committee stated, *"The failure of these un-American and unpatriotic students to revere the flag is a symbol of Satan at work in our schools."*

The students responded by wearing red arm bands in protest of the decision of J.J. and the school committee. The students then spoke out in their school newspaper with these comments. *"J.J. Brandywine should be brought before the school board and have to account for his remarks condemning us as unpatriotic little hypocrites. Furthermore, J.J. is an insensitive and bigoted individual. He is not qualified to lead this school and should be removed."*

The school board, after following due process, suspended the students for staging an illegal protest and failing to salute the flag.

The school board also shut down the school newspaper.



**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 3: THE CONFRONTATION**

The City of Salisbury has had a continuing problem with racial violence in its low income housing projects. In order to rectify the problem, the Housing Authority has proposed the following building ordinance: *"Henceforth in the city of Salisbury the following zoning laws will apply: 1) All single family homes must of at least \$105,000 in value with a minimum lot size of one third of an acre, 2) all townhomes and condominiums must have a minimum value of \$95,000. We will allow no trailer homes, duplexes, manor homes or any such multiple dwellings in the city of Salisbury."*

The Poor People's Council responded with a torchlight parade through downtown Salisbury. The police met the peaceful protest march on Fifth and Monroe and arrested them for a breach of the peace. They were read their rights and booked on the charge of Breach of the Peace.

Judge P.J. Windbag, upon conviction of the jury, sentenced the protestors to three years in the state prison at Monrovin with no parole. The prisoners were housed in bunk beds in an old abandoned warehouse. They were given two meals a day. One meal consisted of bread and water. The second meal was lime drab soup mixed with carrots.

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 4: JOCK STRAP JOHNNY**

Johnny was an outstanding athlete at Shady Grove Senior High. Johnny considered himself a big man on campus. He fancied himself as a ladies's man and felt he was God's gift to women. One of the most delightful young ladies at Shady Grove Senior High was Ginger who was gorgeous.

Johnny finally convinced Ginger to go out with him. Ginger was somewhat apprehensive because Johnny had the reputation of trying to seduce his dates. Johnny fancied himself a real lady killer, and few had refused his advances.

On this particular evening, Johnny drove Ginger to High Bluffs overlooking the ocean. Johnny tried all his smooth moves on Ginger, but to no avail. Frustrated beyond belief and suffering from a severely bruised ego, Johnny finally forced himself upon her.

Ginger finally managed to escape Johnny and flagged a passing motorist. Ginger asked to be driven directly to the police station. Upon arrival, Ginger sought out Sergeant Big Bear Williams, a personal friend of the family, who upon hearing her terrible story rushed from the police station to find Johnny.

Big Bear caught up with Johnny at TEX-MEX Pool and Beer Garden. Big Bear rushed at Johnny and secured him with a double arm bar and chicken wing hold. Big Bear said, *"Your coming with me, you no good ....."*

Johnny tried to get away, but Big Bear was much too much for Johnny. Big Bear, upon getting back to the police station, hauled Johnny into an interrogation room and bel-lowed, *"Confess, you lousy son of a cockroach."* Johnny refused to answer and Big Bear whacked Johnny on the side of the head with his night stick and delivered a powerful kick into Johnny's kidneys. Johnny rolled over with blood spewing from the side of his head, still refusing to acknowledge the dirty deed. Big Bear then took out a rubber hose and smacked Johnny across the ribs, doubling him over like a sack of flour.

Johnny finally signed a confession and was promptly booked and held over for trial. The District Attorney decided to prosecute Johnny as an adult.

Johnny was convicted by a jury of sexual misconduct in the first degree. Judge Dan-forth then ordered Johnny deported to the Island of Melba for the rest of his days.

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 5: BAD BEER BENNIE**

Bennie was a carefree devil-may-care kind of a guy. He loved the night lights and his beer. Bennie boasted that he could kill a six pack of beer and still balance a quarter on his nose.

Bennie hated school and particularly Woody Winesome, who was Bennie's government teacher. Woody got on Bennie's case about not doing his work and falling far behind in his classes. Bennie slumped in his seat and tried to tune out Woody Winesome. "*Man,*" thought Bennie, "*if I can only get through the day!*" Bennie had a lot of those thoughts! Bennie wasn't exactly Phi Betta Kappa.

It was Friday night, Bennie's night to howl. On this particular evening, Bennie, Freddie and Jack the Snake decided to have a few boilermakers and then head for Tank's Tavern. As the boys were driving in I-94, they saw a long line of cars slowing down. The patrolmen were stopping every tenth car and asking the drivers to step out. Bennie realized that he was in the middle of a sobriety check. To Bennie's consternation, his car was stopped. The officer asked Bennie a few questions and then after smelling alcohol on Bennie's breath, asked him to step out. Bennie had to walk the line and pick up a coin off the ground. Bennie took the field test voluntarily and on the basis of the field test Bennie was arrested. Bennie's rights were read to him and the officer then search Bennie's car, including the trunk. Cocaine was found in the trunk. Bennie was taken to police headquarters and told to take the chemical testing for blood alcohol. Bennie registered .17 after the test.

Bennie was subsequently found guilty of drunken driving and possession of cocaine.

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 6: CHEVROLET, BASEBALL AND APPLE PIE**

The Gulf War between Iraq and the U.S. was supported by 80% of the American public. In every city and hamlet across the country patriotic Americans rallied around the flag. There is nothing like a good and just war to bring out the best in Americans.

However, Missy Peacenik and her friends felt the U.S. lured Saddam Hussein into the war to solve economic problems at home and to dispose of Saddam once and for all. Missy obtained approval from the city of Minneapolis to march on a prescribed route through the city protesting the war. The march started in downtown Minneapolis and was met by signs of *"Love America or leave it."* The peace protesters responded with *"No blood for oil."* *"Down with that war monger, Bush."*

The crowd grew ugly, and suddenly a fight broke out between the peace protesters and the supporters of the war. No one quite knew who was responsible for the fracas, and the fur began to fly. Soon the city was a mass scene of mayhem and destruction. Blood flowed freely. Rocks and bottles were flying everywhere. A riot was in progress, and soon sirens sounded and the riot squad was on the way.

The police arrested only the protesters who were dressed in shabby clothes and looked like the homeless. They were a motely collection of bearded wonders and bandanna beauties who resembled the hippies of the 60's and 70's.

Upon arrest, the police informed the defendants of their rights. The defendants were convicted of a breach of the peace and sentenced to 30 days in the county jail.

**RIGHTS OF THE ACCUSED**  
**WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 7: THE RELIGIOUS DEBATE**

John and Mary despaired about the secular humanism being taught in the public schools of Tarreytown. They objected to the teaching of evolution at Tarreytown High. They felt the school was a cesspool of sin and debauchery. John and Mary wanted to teach their two youngsters, Samuel, age 16, and Sara, age 15, in the ways of their religion. John and Mary also objected to the drugs, foul language, and sex education program at the school.

John and Mary petitioned the school board to teach Samuel and Sara at home in the ways of their religion. They argued that the school officials failed to teach the morals and values that they felt were important in their religion.

The school board turned down their request. The board argued that John and Mary were not certified as teachers and therefore were not competent to instruct their children in the curriculum. The school board further argued that John and Mary could not possibly offer the broad range of courses in their home.

John and Mary countered with the argument that they would be willing to have Samuel and Sara tested by the school district in Math, English, Science, and Social Studies.

The school board rejected their plan and ordered John and Mary to send their children to public school.



**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout 8: ESPIONAGE AND HONOR**

Three government workers, Joe Brady, Jim Stillwell and Maggie Wonderlust were accused by the government of un-American activities. The three workers attended a rally of "*The Young Socialist Workers of American.*" The three government workers, Brady, Stillwell and Wonderlust called for the overthrow of the U.S. government and for replacement with a new world order.

Brady, Stillwell and Wonderlust proceeded to publish "*The Socialist Review*," a newspaper that was extremely critical of the United States. This paper denounced the government of the U.S. as a bunch of greed imperialists bent on enhancing the wealthy class of Americans at the expense of minorities and poor whites.

The F.B.I. had been following the activities of Brady, Stillwell and Wonderlust for over two years. The director of the F.B.I., J.P. Snodgrass, III, ordered his agents to apprehend Brady, Stillwell and Wonderlust. Furthermore, J.P. ordered the newspaper shut down and all the assets of Brady, Stillwell and Wonderlust seized.

On Friday the 13th of October, federal agents seized Brady, Stillwell and Wonderlust. They whisked them off to what is known as Uncle Sam's Charm School, a remote compound in the Alaskan wilderness.

Brady, Stillwell and Wonderlust were never heard from again. They vanished into the labyrinth of the government's maze.

The official government version of the case is that Stillwell, Brady and Wonderlust were prosecuted under the Subversive Security Act.

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED?** \_\_\_\_\_

**Student Handout: ANSWER SHEET**

| <b>Amendment Violated</b> | <b>How Amendment was violated</b> |
|---------------------------|-----------------------------------|
|---------------------------|-----------------------------------|

**Student Handout 1: BILLY BUD'S GIRLS**

- |    |    |
|----|----|
| 1) | 1) |
| 2) | 2) |

**Student Handout 2: THE FLAG SALUTE**

- |    |    |
|----|----|
| 1) | 1) |
|    | 2) |

**Student Handout 3: THE CONFRONTATION**

- |    |    |
|----|----|
| 1) | 1) |
| 2) | 2) |
| 3) | 3) |

**Student Handout 4: JOCK STRAP JOHNNY**

- |    |    |
|----|----|
| 1) | 1) |
| 2) | 2) |
| 3) | 3) |

**Student Handout 5: BAD BEER BENNIE**

- |    |    |
|----|----|
| 1) | 1) |
| 2) | 2) |

**Student Handout 6: CHEVROLET, BASEBALL AND APPLE PIE**

- |    |    |
|----|----|
| 1) | 1) |
| 2) | 2) |

**Student Handout 7: THE RELIGIOUS DEBATE**

- |    |    |
|----|----|
| 1) | 1) |
|----|----|

**Student Handout 8: ESPIONAGE AND HONOR**

- |    |    |
|----|----|
| 1) | 1) |
| 2) | 2) |
| 3) | 3) |
| 4) | 4) |
| 5) | 5) |
| 6) | 6) |

**RIGHTS OF THE ACCUSED  
WHOSE RIGHTS ARE VIOLATED? \_\_\_\_\_**

**ANSWER KEY**

**Amendment Violated**

**How Amendment was violated**

**Student Handout 1: BILLY BUD'S GIRLS**

- |       |                                 |
|-------|---------------------------------|
| 1) #5 | 1) failed to follow due process |
| 2) #6 | 2) trial was prejudiced         |

**Student Handout 2: THE FLAG SALUTE**

- |       |                                 |
|-------|---------------------------------|
| 1) #1 | 1) flag salute is voluntary     |
|       | 2) freedom of expression denied |

**Student Handout 3: THE CONFRONTATION**

- |         |                                     |
|---------|-------------------------------------|
| 1) 1st  | 1) peaceful assembly not protected  |
| 2) 8th  | 2) punishment is excessive          |
| 3) 14th | 3) equal protection clause violated |

**Student Handout 4: JOCK STRAP JOHNNY**

- |         |                                           |
|---------|-------------------------------------------|
| 1) 5th  | 1) no Miranda warning, coerced confession |
| 2) 8th  | 2) cruel & unusual punishment             |
| 3) 14th | 3) denial of citizenship                  |

**Student Handout 5: BAD BEER BENNIE**

- |        |                     |
|--------|---------------------|
| 1) 4th | 1) illegal search   |
| 2) 6th | 2) right to counsel |

**Student Handout 6: CHEVROLET, BASEBALL AND APPLE PIE**

- |         |                                     |
|---------|-------------------------------------|
| 1) 1st  | 1) protest incited riot             |
| 2) 14th | 2) equal protection clause violated |

**Student Handout 7: THE RELIGIOUS DEBATE**

- |        |                                  |
|--------|----------------------------------|
| 1) 1st | 1) denial of freedom of religion |
|--------|----------------------------------|

**Student Handout 8: ESPIONAGE AND HONOR**

- |         |                                                      |
|---------|------------------------------------------------------|
| 1) 1st  | 1) freedom of speech denied, freedom of press denied |
| 2) 4th  | 2) no warrant to impound assets                      |
| 3) 5th  | 3) no Miranda warning                                |
| 4) 6th  | 4) denial of fair trial                              |
| 5) 8th  | 5) cruel & unusual punishment                        |
| 6) 14th | 6) equal protection clause violated                  |

## **RIGHTS OF THE ACCUSED**

### **YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES** \_\_\_\_\_

## **You Decide**

### **Student Developed Guidelines for School Offenses**

**by Doug Johnson**

This lesson is an introduction to a study of sentencing guidelines and the fairness or unfairness of criminal punishment in general. It is designed to stimulate questioning by students rather than to give answers. Students in small groups create for school rule offenses a system of punishments similar to the criminal sentence guidelines. Then they analyze the systems and compare them to the Minnesota Sentencing Guidelines. This plan could be used in any unit on criminal law or punishment. It also could be used to introduce the sentencing unit in *Fairness & Freedom* by the Minnesota Center for Community Legal Education.

#### **Students will:**

1. Understand the importance of fairness in any system of punishment.
2. Experience the difficulty in creating a system of punishment which is fair in a complex society.
3. Experience increase respect for the criminal justice system.
4. Analyze and evaluate a system of punishment using their own value system.

**Materials needed:** Copies of: **Student Handout: SCHOOL OFFENSES**  
**Student Handout: CHART OF SCHOOL OFFENSES**  
**& PUNISHMENTS RANKED BY SEVERITY**  
**Sentencing Guideline Grid,**  
**Offense Severity Table.**  
Pencils, and paper

**Time needed:** 1 to 2 days

**Grade level:** 7th - 12th grades

#### **Procedure:**

##### **Day 1:**

1. **Introductory Discussion:** Introduce the concept of sentencing and the people who decide sentencing in criminal court. Make the discussion open ended with questions such as:

- A. How does a judge decide what is an appropriate sentence?
- B. Should a sentence be a punishment, vengeance, or should it try to change behavior?

## RIGHTS OF THE ACCUSED

### YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES \_\_\_\_\_

#### Procedure cont.

C. Could the same crime sometimes deserve a more or less severe punishment.

2. Have the class give examples of times when they or people they know have been punished. Ask them to evaluate the examples by asking questions such as:

- A. Was the punishment fair?
- B. Would something else have been more appropriate?
- C. Did it change their behavior?

The discussion should be shaped to the conclusion that punishment should be more than just vengeance; it should have a level of fairness

3. Give the students **Student Handout: SCHOOL OFFENSES**. Have them read the list and add any offenses they think should be on the list. Ask them to break into discussion groups and rank each school offense according to how bad they think it is and where it should go on the chart.

While the groups are working, encourage consideration of questions such as:

- A. Are all of these actual violations of school rules? Should they be if they are?
- B. What purpose should rule serve?
- C. What additional information might you want before making a decision about the severity of an offense?
- D. Does it make a difference if it is the first, third, or tenth time a student has committed the same offense?

4. As a large group, discuss the types of actions a school uses to enforce it's rules. Make a list on the board. Examples might include:

- A. detention
- B. behavioral contract
- C. parental contact - phone, parent called to school, etc.
- D. suspension from school
- E. in school suspension
- F. criminal prosecution, referral



## RIGHTS OF THE ACCUSED

### YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES \_\_\_\_\_

#### Procedure cont.

5. Back in small groups, have the students rank the punishments by severity and match them with the offenses using **Student Handout: CHART OF SCHOOL OFFENSES & PUNISHMENTS RANKED BY SEVERITY**. They need not complete all of the boxes in a uniform manner. As they are doing this, stop them occasionally and ask questions such as:

- A. Should prior bad behavior be considered?
- B. Should the amount of damage be considered?
- C. Should the amount of injury be considered? (A broken leg on the stairs or an eye put out by a rock?)
- D. Should the cost to society be considered? (While fire truck is at school, Bob Smith's garage burns down?)
- E. Can a lot of minor bad behavior ever justify a severe offense?

As you approach the end of class, have the students complete the **chart** and be prepared to present it to the class the next day.

#### Day 2:

1. Have each group present their plan to the class. After they present it, analyze or evaluate the plan on criteria such as:

- A. What is most or least fair about it?
- B. How could it be made more fair?
- C. Will it improve the function and safety of the school?

At this point, students should see the problem of making a system of sentences fit a complex society with many varied value systems.

2. Distribute copies of **Sentencing Guidelines Grid** and **Offense Severity Table**. Explain how the state has tried to solve the problem of fair punishment by using the table and point system. In discussion, evaluate it using the same criteria they used on their system.

- A. Is it fair?
- B. How could it be made more fair?
- C. Does it improve the function and safety of society?

For additional information on sentencing and more student activities see *Fairness & Freedom Courts As A Forum For Justice*, Chapter 16, by the Minnesota Center for Community Legal Education, Hamline University School of Law, 612.641.2279

Minnesota Center for Community Legal Education  
Hamline University School of Law

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**RIGHTS OF THE ACCUSED**

**YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES** \_\_\_\_\_

**Student Handout: SCHOOL OFFENSES**

Cutting in the lunch line  
Chewing gum  
Vandalizing a school desk  
Late to class  
Cheating on a Final test  
Stealing a lunch from a locker  
Tripping a student on the stairs  
Stealing a gold locket from a purse  
Pulling a fire alarm  
Cheating in a basketball game in gym class  
Teasing a classmate, name calling  
Stealing a bike from the bike rack  
Fighting  
Assaulting a classmate  
Phoning in a bomb threat  
Skipping detention  
Throwing gum in someone's hair  
Intentionally breaking a window  
Threatening other students to obtain money  
Lying about one student to another  
Marking another student's new blouse with a pen  
Hitting another student with a randomly thrown rock  
Skipping school to stay home and watch soap operas  
Forging parents signature on a school form  
Smoking  
Racist remarks  
Other:

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**RIGHTS OF THE ACCUSED**

**YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES** \_\_\_\_\_

**Student Handout: CHART OF SCHOOL OFFENSES AND PUNISHMENTS RANKED BY SEVERITY**

**OFFENSES**

**POSSIBLE  
PUNISHMENTS**

**Should be turned  
over to police**

|                          |  |  |
|--------------------------|--|--|
| Most Severe<br><b>5</b>  |  |  |
| <b>4</b>                 |  |  |
| <b>3</b>                 |  |  |
| <b>2</b>                 |  |  |
| Least Severe<br><b>1</b> |  |  |

**Not a violation  
of school law**

# RIGHTS OF THE ACCUSED

## YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES \_\_\_\_\_

### SENTENCING GUIDELINES GRID

#### Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with nonimprisonment felony sentences are subject to jail time according to law.

| SEVERITY LEVELS OF CONVICTION OFFENSE                                 |      | CRIMINAL HISTORY SCORE |                |                |                |                |                |                |
|-----------------------------------------------------------------------|------|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
|                                                                       |      | 0                      | 1              | 2              | 3              | 4              | 5              | 6 or more      |
| Sale of a Simulated Controlled Substance                              | I    | 12*                    | 12*            | 12*            | 13             | 15             | 17             | 19<br>18-20    |
| Theft Related Crimes (\$2500 or less)<br>Check Forgery (\$200-\$2500) | II   | 12*                    | 12*            | 13             | 15             | 17             | 19             | 21<br>20-22    |
| Theft Crimes (\$2500 or less)                                         | III  | 12*                    | 13             | 15             | 17             | 19<br>18-20    | 22<br>21-23    | 25<br>24-26    |
| Nonresidential Burglary<br>Theft Crimes (over \$2500)                 | IV   | 12*                    | 15             | 18             | 21             | 25<br>24-26    | 32<br>30-34    | 41<br>37-45    |
| Residential Burglary<br>Simple Robbery                                | V    | 18                     | 23             | 27             | 30<br>29-31    | 38<br>36-40    | 46<br>43-49    | 54<br>50-58    |
| Criminal Sexual Conduct<br>2nd Degree (a) & (b)                       | VI   | 21                     | 26             | 30             | 34<br>33-35    | 44<br>42-46    | 54<br>50-58    | 65<br>60-70    |
| Aggravated Robbery                                                    | VII  | 48<br>44-52            | 58<br>54-62    | 68<br>64-72    | 78<br>74-82    | 88<br>84-92    | 98<br>94-102   | 108<br>104-112 |
| Criminal Sexual Conduct,<br>1st Degree<br>Assault, 1st Degree         | VIII | 86<br>81-91            | 98<br>93-103   | 110<br>105-115 | 122<br>117-127 | 134<br>129-139 | 146<br>141-151 | 158<br>153-163 |
| Murder, 3rd Degree<br>Murder, 2nd Degree (felony murder)              | IX   | 150<br>144-156         | 165<br>159-171 | 180<br>174-186 | 195<br>189-201 | 210<br>204-216 | 225<br>219-231 | 240<br>234-246 |
| Murder, 2nd Degree (with intent)                                      | X    | 306<br>299-313         | 326<br>319-333 | 346<br>339-353 | 366<br>359-373 | 386<br>379-393 | 406<br>399-413 | 426<br>419-433 |

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. **Mandatory Sentences** for policy regarding those sentences controlled by law.



At the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation.



Presumptive commitment to state imprisonment.

\* one year and one day

Taken from *Minnesota Sentencing Guidelines Commission* publication, August 1990

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## RIGHTS OF THE ACCUSED

### YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES \_\_\_\_\_

#### V. OFFENSE SEVERITY REFERENCE TABLE

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

|      |                                                                                    |
|------|------------------------------------------------------------------------------------|
| X    | Adulteration - 609.687, subd. 3(1)                                                 |
|      | Murder 2 - 609.19(1)                                                               |
|      | Murder 2 of an Unborn Child - 609.2662(1)                                          |
| IX   | Murder 2 - 609.19(2)                                                               |
|      | Murder 2 of an Unborn Child - 609.2662(2)                                          |
|      | Murder 3 - 609.195(a)                                                              |
|      | Murder 3 of an Unborn Child - 609.2663                                             |
| VIII | Assault 1 - 609.221                                                                |
|      | Assault 1 of an Unborn Child - 609.267                                             |
|      | Controlled Substance Crime in the First Degree - 152.021                           |
|      | Criminal Sexual Conduct 1 - 609.342                                                |
|      | Death of an Unborn Child in Commission of Crime - 609.268, subd. 1                 |
|      | Importing Controlled Substances Across State Borders - 152.0261                    |
|      | Kidnapping (w/great bodily harm) - 609.25, subd. 2(2)                              |
|      | Manslaughter 1 - 609.20(1) & (2)                                                   |
|      | Manslaughter 1 of an Unborn Child - 609.2664(1) & (2)                              |
|      | Murder 3 - 609.195(b)                                                              |
|      | Prostitution (Patron) - 609.324, subd. 1(a)                                        |
|      | Receiving Profit Derived from Prostitution - 609.323, subd. 1                      |
|      | Solicitation of Prostitution - 609.322, subd. 1                                    |
| VII  | Aggravated Robbery - 609.245                                                       |
|      | Arson 1 - 609.561                                                                  |
|      | Burglary 1 - 609.582, subd. 1(b) & (c)                                             |
|      | Controlled Substance Crime in the Second Degree - 152.022                          |
|      | Controlled Substance Crime in the Third Degree - 152.023, subd. 2 (1) & (2)        |
|      | Criminal Sexual Conduct 2 - 609.343, subd. 1(c), (d), (e), (f), & (h)              |
|      | Criminal Sexual Conduct 3 - 609.344, subd. 1(c), (d), (g), (h), (i), (j), & (k)    |
|      | Criminal Vehicular Homicide and Injury - 609.21, subd. 1(1)&(2) and subd. 3(1)&(2) |
|      | Fleeing Peace Officer (resulting in death) - 609.487, subd. 4(a)                   |
|      | Great Bodily Harm Caused by Distribution of Drugs - 609.228                        |
|      | Kidnapping (not in safe place) - 609.25, subd. 2(2)                                |
|      | Malicious Punishment of Child (great bodily harm) - 609.377                        |
|      | Manslaughter 1 - 609.20 (3) & (4)                                                  |
|      | Manslaughter 1 of an Unborn Child - 609.2664(3)                                    |
| VI   | Manslaughter 2 - 609.205(1)                                                        |
|      | Manslaughter 2 of an Unborn Child - 609.2665(1)                                    |
|      | Arson 2 - 609.562                                                                  |
|      | Assault 2 - 609.222                                                                |

Taken from *Minnesota Sentencing Guidelines Commission* publication, August 1990



## RIGHTS OF THE ACCUSED

### YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES

- VI
- Bringing Stolen Goods Into State (over \$2,500) - 609.525
  - Burglary 1 - 609.582, subd. 1(a)
  - Controlled Substance Crime in the Third Degree - 152.023, subd. 1 & subd. 2 (3), (4), (5), & (6)
  - Criminal Sexual Conduct 2 - 609.343, subd. 1(a), (b), & (g)
  - Criminal Sexual Conduct 4 - 609.345, subd. 1(c), (d), (g), (h), (i), (j), & (k)
  - Criminal Vehicular Homicide and Injury - 609.21, subd. 1(3)&(4) and subd. 3(3)&(4)
  - Escape from Custody - 609.485, subd. 4(5)
  - Failure to Affix Stamp on Cocaine - 297D.09, subd. 1
  - Failure to Affix Stamp on Hallucinogens or PCP - 297D.09, subd. 1
  - Failure to Affix Stamp on Heroin - 297D.09, subd. 1
  - Failure to Affix Stamp on Remaining Schedule I & II Narcotics-297D.09, subd. 1
  - Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b)
  - Kidnapping - 609.25, subd. 2(1)
  - Malicious Punishment of Child (great bodily harm) - 609.377
  - Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.526, (1)
  - Precious Metal Dealers, Receiving Stolen Goods (over \$300) - 609.526, second or subsequent violations
  - Price Fixing/Collusive Bidding - 325D.53, subd. 1(2) (a)
  - Theft over \$35,000 - 609.52, subd. 3(1)

- V
- Bringing Stolen Goods Into State (\$1,000 - \$2,500) - 609.525
  - Burglary - 609.582, subd. 2(a) & (b)
  - Check Forgery over \$35,000 - 609.631, subd. 4(1)
  - Criminal Sexual Conduct 3 - 609.344, subd. 1(b), (e), & (f)
  - Criminal Vehicular Homicide and Injury - 609.21, subd. 2 & 4
  - Financial Transaction Card Fraud over \$35,000 - 609.821, subd. 3(1) (f)
  - Manslaughter 2 - 609.205(2), (3), & (4)
  - Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), & (4)
  - Perjury - 609.48, subd. 4(1)
  - Possession of Incendiary Device - 299F.79; 299F.80, subd. 1; 299F.811; 299F.815; 299F.82, subd. 1
  - Price Fixing/Collusive Bidding - 325D.53, subd. 1(1), and subd. 1(2) (b) & (c)
  - Prostitution (Patron) - 609.324, subd. 1(b)
  - Receiving Profit Derived from Prostitution - 609.323, subd. 1a
  - Simple Robbery - 609.24
  - Solicitation of Prostitution - 609.322, subd. 1a
  - Tampering w/ Witness - 609.498, subd. 1

- IV
- Accidents - 169.09, subd. 14 (a) (1)
  - Adulteration - 609.687, subd. 3(2)
  - Assault 2 of an Unborn Child - 609.2671
  - Assault 3 - 609.223, subd. 1
  - Bribery - 609.42; 90.41; 609.86
  - Bring Contraband into State Prison - 243.55
  - Bring Dangerous Weapon into County Jail - 641.165, subd. 2(b)
  - Bringing Stolen Goods Into State (\$301 - \$999) - 609.525
  - Burglary 2 - 609.582, subd. 2 (c) & (d)
  - Burglary 3 - 609.582, subd. 3
  - Controlled Substance Crime in the Fourth Degree - 152.024

Taken from *Minnesota Sentencing Guidelines Commission* publication, August 1990

## RIGHTS OF THE ACCUSED

### YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES \_\_\_\_\_

IV Criminal Sexual Conduct 4 - 609.345, subd. 1 (b), (e), & (f)  
False Imprisonment - 609.255, subd. 3  
Fleeing Peace Officer (substantial bodily harm) - 609.487, subd. 4(c)  
Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2  
Malicious Punishment of Child (substantial bodily harm) - 609.377  
Negligent Fires - 609.576, subd. 1 (a)  
Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4(2)  
Precious Metal Dealers, Receiving Stolen Goods (\$301 - \$2,500) - 609.526 (1)&(2)  
Receiving Stolen Goods (over \$2,500) - 609.53  
Receiving Stolen Property (firearm) - 609.53  
Security Violations (over \$2,500) - 80A.22, subd. 1; 80B.10, subd. 1;  
80C.16, subd. 3(a) & (b)  
Sports Bookmaking - 609.75, subd. 7  
Tax Evasion - 290.53, subd. 4 & 11  
Tax Withheld at Source; Fraud (over \$2,500) - 290.92 subd. 15(4) & (11);  
290A.11, subd. 2  
Terroristic Threats - 609.713, subd. 1  
Theft Crimes - Over \$2,500 (See *Theft Offense List*)  
Theft from Person - 609.52  
Theft of Controlled Substances - 609.52, subd. 3(2)  
Theft of Motor Vehicle - 609.52, subd. 3(3) (d) (v)  
Use of Drugs to Injure or Facilitate Crime - 609.235

III Accidents - 169.09, subd. 14(a) (2)  
Arson 3 - 609.563  
Check Forgery (over \$2,500) - 609.631, subd. 4(2)  
Coercion - 609.27, subd. 1(1)  
Coercion (over \$2,500) - 609.27, subd. 1(2), (3), (4), & (5)  
Criminal Vehicular Homicide and Injury - 609.21, subd. 2a  
Damage to Property - 609.595, subd. 1 (1)  
Dangerous Smoking - 609.576, subd. 2  
Dangerous Trespass, Railroad Tracks - 609.85(1)  
Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1(b)  
Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (2)  
Escape from Custody - 609.485, subd. 4(1)  
False Imprisonment - 609.255, subd. 2  
False Traffic Signal - 609.851, subd. 2  
Intentional Release of Harmful Substance - 624.732, subd. 2  
Motor Vehicle Use without Consent - 609.52, subd. 2 (17)  
Negligent Discharge of Explosive - 299F.83  
Possession of Burglary Tools - 609.59  
Possession of Shoplifting Gear - 609.521  
Prostitution (Patron) - 609.324, subd. 1(c)  
Receiving Profit Derived from Prostitution - 609.323, subd. 2  
Receiving Stolen Goods (\$2,500 or less) - 609.53  
Security Violations (under \$2,500) - 80A.22, subd. 1; 80B.10, subd. 1;  
80C.16, subd. 3(a) & (b)  
Solicitation of Children to Engage in Sexual Conduct - 609.352, subd. 2  
Solicitation of Prostitution - 609.322, subd. 2  
Tax Withheld at Source; Fraud (\$301 - \$2,500) - 290.92, subd. 25(4) & (11);  
290A.11, subd. 2

Taken from *Minnesota Sentencing Guidelines Commission* publication, August 1990

Minnesota Center for Community Legal Education  
Hamline University School of Law

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## RIGHTS OF THE ACCUSED

### YOU DECIDE: STUDENT DEVELOPED GUIDELINES FOR SCHOOL OFFENSES \_\_\_\_\_

- III  
Tear Gas & Tear Gas Compounds - 624.731, subd. 8
- Theft Crimes - \$2,500 or less (*See Theft Offense List*)
- Theft of Controlled Substances - 609.52, subd. 3(3) (b)
- Theft of a Firearm - 609.52, subd. 3(3) (d) (v)
- Theft of Public Records - 609.52
- Theft Related Crimes - Over \$2,500 (*See Theft Related Offense List*)
- Unauthorized Presence at Camp Ripley - 609.396, subd. 2

- Accidents - 169.09, subd. 14(a)(3) & (b)(1)
- Aggravated Forgery (misc) (non-check) - 609.625; 609.635; 609.64
- Check Forgery (\$200 - \$2,500) - 609.631, subd. 4(3) (a)
- Coercion (\$300 - \$2,500) - 609.27, subd. 1(2), (3), (4), & (5)
- Controlled Substance in the Fifth Degree - 152.025
- Damage to Property - 609.595, subd. 1(2), (3), & (4)
- Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics - 297D.09, subd. 1
- I  
Firearm Silencer - 609.66, subd. 1a (1)
- Negligent Fires (damage greater than \$10,000) - 609.576, subd. 1 (b) (3)
- Precious Metal Dealers, Regulatory Provisions - 325F.743
- Riot - 609.71
- Telecommunications Fraud - 609.893, subd. 2
- Terroristic Threats - 609.713, subd. 2
- Theft-Looting - 609.52
- Theft Related Crimes - \$2,500 or less (*See Theft Related Offense List*)

- Accidents - 169.09, subd. 14(b)(2)
- Assault 3 - 609.223, subd. 2
- Assault 4 - 609.2231, subd. 1
- Assaults Motivated by Bias - 609.2231, subd. 4 (b)
- Aiding Offender to Avoid Arrest - 609.495
- Bullet-Resistant Vest During Commission of Crime - 609.486
- Cable Communication Systems Interference - 609.80, subd. 2
- Check Forgery (less than \$200) - 609.631, subd. 4(3)(b)
- Criminal Damage to Property Motivated by Bias - 609.595, subd. 1a, (a)
- Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (1)
- Discharge of Firearm - 609.66, subd. 1a (3)
- Escape from Custody - 609.485, subd. 4(2)
- I  
Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols - 297D.09, subd. 1
- Failure to Affix Stamp on Schedule IV Substances - 297D.09, subd. 1
- Financial Transaction Card Fraud - 609.821, subd. 2(3) & (4)
- Fleeing a Police Officer - 609.487, subd. 3
- Forgery - 609.63; and Forgery Related Crimes (*See Forgery Related Offense List*)
- Furnishing Firearm to Minor - 609.66, subd. 1a (2)
- Leaving State to Evade Establishment of Paternity - 609.31
- Nonsupport of Wife or Child - 609.375, subd. 2, 3, & 4
- Sale of Simulated Controlled Substance - 152.097
- Unlawful Acts Involving Liquor - 340A.701
- Solicitation of Prostitution - 609.322, subd. 3
- Terroristic Threats - 609.713, subd. 3(a)
- Voting Violations - 201.014; 201.016; 201.054

Taken from *Minnesota Sentencing Guidelines Commission* publication, August 1990

## **RIGHTS OF THE ACCUSED**

### **BILL OF RIGHTS: FOURTH AMENDMENT**

# **Bill of Rights: Fourth Amendment** **by Bev Dyrland**

Students will examine the Fourth Amendment and its importance to them through an integrated curriculum using role playing, essay questions, and letter writing.

#### **Students will:**

1. Understand the terminology of the Fourth Amendment.
2. Be able to rewrite the Fourth Amendment in simpler terms.
3. Apply the Fourth Amendment in selected role plays.
4. Be able to defend their interpretation of the Fourth Amendment as it relates to their daily lives.

**Materials Needed:** Copies of: **Student Handouts: 1, 2, 3, 4, 5**

**Student Handout: ROLELAY TASK CARDS**

(4 for each group)

**OVERHEAD:** Fourth Amendment

Overhead Projector

paper for posters

Supreme Court Justices names and address of court (NOT INCLUDED)

**Time needed:** 7-8 days

**Grade level:** Elementary 5th - 6th grades

#### **Procedure:**

##### **DAY 1**

1. List selected vocabulary words on chalkboard or overhead
2. Discuss their understanding of the vocabulary and use in sentences.
3. Have students complete **Student Handout 1** and **Student Handout 2**.

##### **DAY 2**

1. Discuss the completed vocabulary worksheet.

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**Procedure cont.**

2. Display the Fourth Amendment on the overhead and have students discuss what it means to them as written.
3. Distribute **Student Handout 3** to everyone with an incomplete Fourth Amendment on bottom.
4. Have students complete the Fourth Amendment using the selected vocabulary on previously completed worksheet

**DAY 3**

1. Review and compare the rewritten Fourth Amendment to the original amendment.
2. Discuss what this amendment may mean in their daily lives. How does it apply? (Brainstorming in groups.)
3. Full group discussion of ideas.

**DAY 4**

1. Review Fourth Amendment
2. Have students divide into groups of four. Instruct them that each person will play the role of someone involved in a search. One will be the person who is searched; one will be the person doing the search; one will be a person who thinks the search is necessary; one will be a person who doesn't think the search is necessary. The students will draw their roles by selecting a task card. (**Student Handout: Roleplay Task Cards**)
3. After each student has selected a task card, have the students roleplay the situation for a few minutes.
4. As a large group, discuss the search roleplays.
  - A. How did you feel?
  - B. What were you thinking?
  - C. Is there a need for this amendment?
  - D. When do you think it has been violated?
  - E. Should it ever be violated?



**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

Procedure cont.

**DAY 5**

1. Have guest speakers join the class to discuss searches/seizures. The school principal and/or a police officer would be excellent speakers.
2. Write thank you letters to guest speakers in Language class

**DAY 6**

1. In Art Class, design a poster about the Fourth Amendment

**DAY 7**

1. Share posters with classmates.
2. In Social Studies class, answer essay questions. (Student Handout 4.)
3. In Language class, write a letter using proper business letter format. (Student Handout 5.)

**Extension Activities:**

1. Consider intolerable acts during pre-revolutionary war period and the founder's perspectives in searches.
2. Discuss the Fourth Amendment as it relates to times of peace and times of war.
3. Search for articles in newspaper and magazine regarding search and seizure for an ongoing bulletin board.
4. Read *Souder* by W. H. Armstrong to class and discuss the legal aspects as it relates to the Fourth Amendment.

**RIGHTS OF THE ACCUSED****BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_**Student Handout 1: Fourth Amendment Vocabulary**

Name \_\_\_\_\_

Match the vocabulary term in Column A with the meaning in Column B.  
Write the letter in front of the word in Column A.

**Column A**

- \_\_\_\_\_ 1. Right
- \_\_\_\_\_ 2. Effects
- \_\_\_\_\_ 3. Seizures
- \_\_\_\_\_ 4. Seized
- \_\_\_\_\_ 5. Unreasonable
- \_\_\_\_\_ 6. Secure
- \_\_\_\_\_ 7. Affirmation
- \_\_\_\_\_ 8. Issue
- \_\_\_\_\_ 9. Warrants
- \_\_\_\_\_ 10. Probable
- \_\_\_\_\_ 11. Violated

**Column B**

- A. Unlawful
- B. Be written
- C. Likely
- D. Personal items (things)
- E. Disturbed
- F. Taking of items
- G. Lawful claim
- H. A written order
- I. Safe
- J. Taken
- K. Declaration

**RIGHTS OF THE ACCUSED**

**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**ANSWER KEY: Fourth Amendment Vocabulary**

Match the vocabulary term in Column A with the meaning in Column B.  
Write the letter in front of the word in Column A

Column A

- G   1. Right
- D   2. Effects
- F   3. Seizures
- J   4. Seized
- A   5. Unreasonable
- I   6. Secure
- K   7. Affirmation
- B   8. Issue
- H   9. Warrants
- C   10. Probable
- E   11. Violated

Column B

- A. Unlawful
- B. Be written
- C. Likely
- D. Personal items (things)
- E. Disturbed
- F. Taking of items
- G. Lawful claim
- H. A written order
- I. Safe
- J. Taken
- K. Declaration

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**Student Handout 2**

**Name** \_\_\_\_\_

**Fourth Amendment Word Search:** In the grid, find these vocabulary words that are an important part of the Fourth Amendment.

Constitutional  
Bill of Rights  
Violated  
Effects  
Right

Unreasonable  
Probable  
Seizures  
Seized

Affirmation  
Warrants  
Preamble  
Secure

|   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| X | V | A | E | R | U | C | E | S | U | F | F | E | C | H | Y | F | I | Z |
| U | M | R | F | L | T | F | E | L | A | M | S | L | R | F | N | N | D | X |
| W | M | I | E | F | F | Z | U | W | B | H | F | B | O | I | T | Z | G | D |
| R | I | G | L | E | I | P | C | F | F | A | H | A | R | C | N | W | E | V |
| H | U | H | C | E | G | R | X | L | K | L | B | N | C | P | A | Z | L | I |
| I | A | T | W | Y | X | O | M | B | I | L | L | O | F | R | I | G | H | T |
| E | S | Y | N | S | N | C | A | G | P | N | S | R | E | J | K | Y | C |   |
| S | K | S | A | N | E | Z | T | R | T | S | R | A | S | P | M | B | E | K |
| D | O | X | X | F | N | L | S | V | T | I | N | E | B | C | R | S | E | G |
| C | I | C | N | Q | K | S | P | I | F | T | O | R | A | O | T | Q | Y | H |
| K | L | H | J | Q | M | K | T | O | S | J | H | N | F | M | I | S | N | B |
| X | C | T | V | C | W | U | H | L | R | Q | P | U | D | V | B | D | W | R |
| F | F | A | R | Z | T | P | E | A | H | J | N | F | D | R | D | L | Y | I |
| B | L | K | D | I | V | X | B | T | I | Q | K | I | K | N | Q | M | E | H |
| G | U | W | O | M | F | Z | S | E | I | Z | U | R | E | S | E | J | D | D |
| M | I | N | B | F | X | K | O | D | B | H | T | Q | N | E | H | N | R | Z |
| C | A | S | S | O | B | X | T | W | O | G | D | V | H | K | S | G | Q | I |
| L | E | V | P | Z | W | X | D | C | G | Y | Z | W | B | C | N | J | J | Z |

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS: FOURTH AMENDMENT**\_\_\_\_\_

**ANSWER KEY: WORD SEARCH**

. . A E R U C E S . . . E . . . . .  
. . R F . . F . L . . . L . . . . .  
. . I . F F . . . B . . B . . . . D  
. . G . E I . . . A . A . . . W E .  
. . H C . . R . . . B N C . A Z . .  
. . T . . . M B I L L O F R I G H T  
. S . . . . . A . P N S R E . . . .  
. . . . . . . T S R A S P . . . .  
. . . . . . . V T I N E . . . . .  
. . . . . . . I . T O R A . . . . .  
. . . . . . T O S . . N . M . . . .  
. . . . . U . L . . . U . . B . . .  
. . . . . T . A . . . . . L . . .  
. . . . I . . T . . . . . E . . .  
. . . O . . . S E I Z U R E S . . . .  
. . N . . . . D . . . . . . . .  
. A . . . . . . . . . . . . .  
L . . . . . . . . . . . . . .



**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**OVERHEAD: Fourth Amendment**

**Amendment IV:**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

**RIGHTS OF THE ACCUSED**

**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**Student Handout 3**

**Name** \_\_\_\_\_

**Amendment IV:**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Use your vocabulary worksheet and fill in the missing blanks with the meanings of the missing words.

The \_\_\_\_\_ of the people to be \_\_\_\_\_ in their persons, houses, papers, and \_\_\_\_\_, against \_\_\_\_\_ searches and \_\_\_\_\_, shall not be \_\_\_\_\_, and no \_\_\_\_\_ shall \_\_\_\_\_, but upon \_\_\_\_\_ cause, supported by Oath or \_\_\_\_\_, and particularly describing the place to be searched, and the persons or things to be \_\_\_\_\_.

**RIGHTS OF THE ACCUSED**

**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**Student Handout 4**

**Name** \_\_\_\_\_

**Amendment IV:**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

What does the Fourth Amendment mean to you today?

Do you think the Fourth Amendment will be important to you in the future? Why or why not?

**RIGHTS OF THE ACCUSED**

**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**Student Handout 5**

**Name** \_\_\_\_\_

**Amendment IV:**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Suppose the U.S. Supreme Court was meeting to decide whether the Fourth Amendment was necessary or should be removed from the Bill of Rights. Write a letter to one of the Justices and explain your views about what should be decided. (Remember, *explain* means to give reasons why you feel this way.)

**RIGHTS OF THE ACCUSED**  
**BILL OF RIGHTS: FOURTH AMENDMENT** \_\_\_\_\_

**Student Handout: Roleplay Task Cards**

**Person 1**

You have just left a record store where you have been for the last forty minutes. Some of the friends who were with you purchased some CDs. You did not. As you approached the sidewalk, the store's security officer stopped you and began to question you about something he\she saw you place inside your jacket. He\she wants to search your pockets.

**Person 2**

You are the security officer at a record store. You have just watched several young people for about forty minutes. Some of the young people have purchased CDs. One person did not buy anything. You think this person placed something inside of his\her coat. You will search the inside and outside pockets.

**Person 3**

You own a record store. You are tired of young people stealing your tapes. You have hired a security officer to try to reduce the theft rate.

**Person 4**

You are a student who has just purchased a CD at a local record store. You went into the store with several friends. You did not like the way the security officer was looking at you. You are tired of being suspected of causing all of the problems in the world. The security officer thinks your friend has stolen a tape.



**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE**

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**The Exclusionary Rule**  
**by Tom Newell**

In this exercise, students are to divide up into groups of three or five. They are to consider themselves as appellate court judges that are deciding cases dealing with evidence that was seized by police officers. The evidence in question may have been "tainted" by questionable Constitution practices of the police. The cases deal mainly with the Fourth, Fifth, Sixth and Fourteenth Amendments. This exercise could be used at any time during the study of search and seizure. It is suggested that students have some understanding of the appellate court and the role of an appellate court judge.

**Students will:**

1. Identify the constitutional amendment(s) that apply to the case.
2. List arguments both for and against the "allowability" of the evidence
3. Work with others and try to reach consensus within their groups
4. Form an opinion of the Exclusionary Rule and be able to list reasons for their opinion.

**Materials needed:** Copies of: **Student Handout: CASE STUDY 1-6**  
**Student Handout: OPINION SHEET**  
**4th, 5th, 6th, 14th Amendments (See Appended Materials)**

**Time needed:** 2 hours

**Grade level:** 10th - 12th grades

**Procedure:**

1. Discuss the Fourth, Fifth, Sixth and Fourteenth Amendments. Ask students if the Exclusionary Rule is found anywhere in the Constitution. Explain that the Rule is not in the Constitution, but that it was a rule of law that was decided by the U.S. Supreme Court. Explain that the Rule not only excludes illegally seized evidence during searches, it excludes illegally seized evidence from illegal questioning of suspects and the "fruits of the poisonous tree" as well. Students should understand the concept of suppressed evidence. Students should be notified that some of these cases were closely split by the courts. Students should know that the suppression of evidence does not necessarily mean that the defendant goes free. It only means that the evidence cannot be used in the courtroom. The defendant can still be brought to trial using other evidence that was legally seized.

## RIGHTS OF THE ACCUSED THE EXCLUSIONARY RULE

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### Procedure cont.

2. Students should break up into groups of three or five. They should place their name at the top of the **Student Handout: CASE STUDY** along with the names of their fellow judges.
3. Students should review 4th, 5th, 6th and 14th Amendments to the Constitution (See Appended Materials). They should read each case and list the constitutional amendment(s) that might apply and a short reason why that amendment applies. Students should list points both for and against applying the Exclusionary Rule in each case. (See **TEACHER BACK-GROUND**)
4. Groups should attempt to reach consensus as to whether the evidence should be allowed or suppressed. Consensus is not required. Each **Student Handout: CASE STUDY** sheet should explain the majority and dissenting opinions along with reasons for the majority and dissenting votes.
5. After completing the cases, students are to give their own "*opinion*" of the Exclusionary Rule. This should be their individual opinion, not the opinion of their group. Students should list some alternatives that could be considered other than the practice of excluding all illegally seized evidence.
6. There should be a follow-up classroom activity that gives students the actual Supreme Court decision in each cases, the year it was decided and the vote. It should be emphasized that their answer is not wrong if they disagree with the Supreme Court. Their *opinion* is different. Another follow-up classroom activity could include taking the Exclusionary Rule Opinions and creating class discussion by reading the opinions to the class. Another discussion would include the theory that perhaps some guilty people must be set free in order for our country to preserve the constitutional values.

### TEACHER OPTIONS

The teacher may want to give different cases to different groups, one at a time. This way, each group would be working on a different case. As groups finish each case, the teacher could quickly review the assignment and give out the next case to that group.

**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE** \_\_\_\_\_

**Student Handout: CASE STUDY 1: *ROCHIN V. CALIFORNIA***

**Justices:**



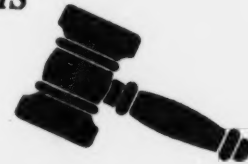
Los Angeles Deputies had information that Anthony Rochin was selling narcotics. Three deputies entered the Rochin home through an open door without a warrant. The deputies forced open his bedroom door and observed what appeared to be drugs on the table next to his bed. Anthony grabbed two pills off the table and swallowed them. The deputies forcefully tried to open his mouth in an attempt to recover the pills. Rochin was then taken to a local hospital where his stomach was pumped against his will. Rochin vomited two capsules of morphine (a narcotic), which police intend to use at his trial.

- Q. What constitutional amendment(s) might apply to this case and why?
  
- Q. List reasons why the evidence should be allowed?
  
- Q. List reasons why the evidence should be disallowed?
  
- Q. The *Majority Opinion* of this court states that ..... (List what your group has decided and give the reasons along with specific references to the Constitution.)
  
- Q. If you do not all agree, then there is a *Dissenting Opinion*. The Dissenting Opinion of this court states..... (List reasons why one or more of the judges disagree with the majority of the court along with specific references to the Constitution).

**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE** \_\_\_\_\_

**Student Handout: CASE STUDY 2: *BREWER V. WILLIAMS***

**Justices:**



Robert Williams was seen carrying an object from the YMCA in Des Moines, Iowa. The object was wrapped in a blanket and had two legs protruding from it. An ten-year-old girl was missing from the YMCA. Williams was arrested the next day in a neighboring city. He was given his rights and was allowed to speak with his attorney by telephone. Williams told the police he did not want to talk about the case without his attorney present. Two police officers drove Williams back to Des Moines. During the ride, the police officers brought up the case saying how sad it is that the parents of the girl are not allowed to have a "Christian burial." Williams, overcome with guilt, made incriminating statements and led the police to the body. The statements and body are to be used as evidence.

- Q. What constitutional amendment(s) might apply to this case and why?
- Q. List reasons why the evidence should be allowed?
- Q. List reasons why the evidence should be disallowed?
- Q. The *Majority Opinion* of this court states that ..... (List what your group has decided and give the reasons along with specific references to the Constitution.)
- Q. If you do not all agree, then there is a *Dissenting Opinion*. The Dissenting Opinion of this court states..... (List reasons why one or more of the judges disagree with the majority of the court along with specific references to the Constitution).

**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE** \_\_\_\_\_

**Student Handout: CASE STUDY 3: *BROWN V. STATE OF MISSISSIPPI***

**Justices:**



Deputies arrested Ed Brown and Henry Shields and took the two of them to the county jail. They were told to take their clothes off and lay down on chairs. The deputies whipped the two accused with leather straps that had buckles attached. The buckles cut into their backs, causing severe pain and bleeding. The defendants were told that they must confess to the crime of murder. They were told exactly what they were to say. If they did not confess, they were told the whipping would continue until they confessed. The defendants confessed in every detail as instructed by the deputies. The confessions are to be used at the upcoming murder trial.

- Q. What constitutional amendment(s) might apply to this case and why?
- Q. List reasons why the evidence should be allowed?
- Q. List reasons why the evidence should be disallowed?
- Q. The *Majority Opinion* of this court states that ..... (List what your group has decided and give the reasons along with specific references to the Constitution.)
- Q. If you do not all agree, then there is a *Dissenting Opinion*. The Dissenting Opinion of this court states..... (List reasons why one or more of the judges disagree with the majority of the court along with specific references to the Constitution).

**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE** \_\_\_\_\_

**Student Handout: CASE STUDY 4: *MIRANDA V. ARIZONA***

**Justices:**



Ernesto Miranda was arrested and questioned by police officers regarding the rape of an Arizona woman. Miranda was not told that he did not have to answer the police officers' questions, nor was he told that he had a right to speak with an attorney. After two hours of questioning by police officer, Ernesto Miranda confessed to the rape. Police officers intend to use the confession at his trial.

- Q. What constitutional amendment(s) might apply to this case and why?
- Q. List reasons why the evidence should be allowed?
- Q. List reasons why the evidence should be disallowed?
- Q. The *Majority Opinion* of this court states that ..... (List what your group has decided and give the reasons along with specific references to the Constitution.)
- Q. If you do not all agree, then there is a *Dissenting Opinion*. The Dissenting Opinion of this court states..... (List reasons why one or more of the judges disagree with the majority of the court along with specific references to the Constitution).



**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE** \_\_\_\_\_

**Student Handout: CASE STUDY 5: MAPP V. OHIO**

**Justices:**



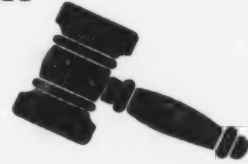
Three Cleveland police officers looking for a bombing suspect, asked to search the home of Ms. Mapp. They believed that the suspect was in her home. Ms. Mapp refused to allow the search. Three hours later, seven police officers forcibly entered the home. They gave Mapp a blank sheet of paper, claiming it to be a search warrant. An attorney representing Mapp was present. He was not allowed to talk to Mapp, see the search warrant or to enter the home. No suspect was found. Officers did find "obscene material" in a trunk in the basement. Mapp was charged with possession of obscene material, and the seized material was to be used at her trial.

- Q. What constitutional amendment(s) might apply to this case and why?
- Q. List reasons why the evidence should be allowed?
- Q. List reasons why the evidence should be disallowed?
- Q. The *Majority Opinion* of this court states that ..... (List what your group has decided and give the reasons along with specific references to the Constitution.)
- Q. If you do not all agree, then there is a *Dissenting Opinion*. The Dissenting Opinion of this court states..... (List reasons why one or more of the judges disagree with the majority of the court along with specific references to the Constitution).

**RIGHTS OF THE ACCUSED**  
**THE EXCLUSIONARY RULE** \_\_\_\_\_

**Student Handout: CASE STUDY 6: MINNESOTA V MURPHY**

**Justices:**



Marshall Murphy was on probation and required to participate in a treatment program for sex offenders. During treatment, he admitted to the murder and rape of a teenage girl. The treatment counselor notified the probation officer of the murder confession. This was brought up at the next probation meeting. During the meeting, Murphy admitted to the probation officer that he had raped and murdered the girl six years earlier. The probation officer notified the Minneapolis police who arrested and charged Murphy with first degree murder. The police intend to use his confession at the murder trial.

- Q. What constitutional amendment(s) might apply to this case and why?
- Q. List reasons why the evidence should be allowed?
- Q. List reasons why the evidence should be disallowed?
- Q. The *Majority Opinion* of this court states that ..... (List what your group has decided and give the reasons along with specific references to the Constitution.)
- Q. If you do not all agree, then there is a *Dissenting Opinion*. The Dissenting Opinion of this court states..... (List reasons why one or more of the judges disagree with the majority of the court along with specific references to the Constitution).

## THE EXCLUSIONARY RULE

## Student Handout: STUDENT OPINION

The Exclusionary Rule is very controversial. Many believe that the Rule should be modified or struck down completely. This Rule is not in the Constitution, but a rule of law set by the previous Supreme Court, it could be changed by any Supreme Court now or in the future. Please write 100 - 200 words giving your *opinion* of the Exclusionary Rule. **Please state where you agree and disagree with the Rule.** Would you like to see it changed? Can you think of other ways to punish police misconduct rather than throwing evidence out of court? What would you do if you were the Chief Justice of the U.S. Supreme Court? Feel free to use examples.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

**RIGHTS OF THE ACCUSED  
THE EXCLUSIONARY RULE**

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**ANSWER KEY to Student Handout: CASE STUDIES**

***Rochin v. California*, 342 U.S. 165 (1952)**

The Court ruled that the morphine should have been excluded from evidence because the methods used by the police to obtain it violated due process law. Justice Frankfurter said in the majority opinion *"This is conduct that shocks the conscience . . . This course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation."*

***Brewer v. Williams*, 430 U.S. 387 (1977)**

The Court ruled that the Sixth and Fourteenth Amendments to the Constitution prohibited the use of a confession that is obtained by police officers deliberately eliciting incriminating information from a defendant in the absence of counsel after a formal charge against a defendant has been filed.

***Brown v. State of Mississippi*, 297 U.S. 278 (1936)**

This is the first Fourteenth Amendment due process confession case. It is based on the principle that confessions must be voluntary and free of influences which would make them untrustworthy or untrue. In this case, the Court ruled that the physical violence was an influence that made the confessions untrustworthy.

***Miranda v. Arizona*, 384 U.S. 436 (1966)**

The Court ruled that the police violated Miranda's Fifth Amendment Constitutional rights. They failed to inform him of his right to remain silent, that anything he would say could be used against him, and that he had a right to counsel before the police could question him. This case established the **Miranda Warning** which police now use prior to interrogation of persons who have been arrested.

***Mapp v. Ohio*, 367 U.S. 643 (1961)**

The Court ruled that evidence that is obtained without the consent of the owner, without a valid search warrant, and with intimidation by the police, is not admissible in a trial. The Court reaffirmed the principle that the *"home is your castle"* and overturned Mapp's conviction.

***Minnesota v. Murphy*, 465 U.S. 419 (1984)**

The Court ruled that Murphy's constitutional rights were not violated because, although he did confess to the crime without being told of his right to keep silent or his right to counsel, he was not being held in custody for purposes of receiving the Miranda warning; he was free to leave, and he was free to keep silent. The Court stated that it is the individual's obligation to assert his or her Fifth Amendment right and that unless the individual is being held in custody evidence obtained is admissible.

## RIGHTS OF THE ACCUSED

### THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90'S \_\_\_\_\_

#### **The Fourth Amendment: Changes and Trends for the 90's**

**by Alan Anderson**

This is to be used after students know the Fourth Amendment principles and the Exclusionary Rule. We will look to how recent cases have changed the interpretation of the Fourth Amendment and analyze where that might lead.

#### **Students will:**

1. Learn how everyday cases change America
2. Learn the importance of case decisions
3. Understand that an interpretation will either give the government more power or the individual more power
4. Analyze current decisions and form opinions as to the direction they believe constitutional law is headed.
5. Learn three current opinions on trends dealing with the Fourth Amendment.

**Materials needed:** Copies of: **Student Handout: FOURTH AMENDMENT DISCUSSION QUESTIONS**  
**OVERHEAD: The Fourth Amendment: Trends in the 1990's**

**Time needed:** 1 to 2 days

**Grade level:** 10th - 12th grades

#### **Procedure:**

1. Students will separate into small groups and answer questions giving reasons for their answers. First questions will review Fourth Amendment principles and the later ones will emphasize new trends.
2. Students will participate in class discussion, giving opinions on **Student Handout: FOURTH AMENDMENT DISCUSSION QUESTIONS**. Teacher will provide additional information.
3. Teacher will use **OVERHEAD: The Fourth Amendment: Trends in the 1990's** on group trends, and build case results into the whole picture of the Bill of Rights.

## **RIGHTS OF THE ACCUSED**

### **THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90's**

**Procedure cont.**

- 4.** Teacher will end with summation and student questions that can be handled as class discussion or as an individual student assignment.



## **RIGHTS OF THE ACCUSED**

### **THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90's\_\_\_\_\_**

#### **Student Handout: FOURTH AMENDMENT DISCUSSION QUESTIONS**

1. Upon stopping a car full of teenagers, a police officer smells the odor of alcohol. Can he search the vehicle? People inside? Containers inside? Trunk? (Make sure to give reasons for your answers.)
2. You tell Mary on the phone that you robbed a Tom Thumb store. Police may use testimony gathered from tapping your phone without a warrant? Does it matter if it is a cordless phone?
3. Police enter a home without warrant or consent. They are not in "hot pursuit," and they discover a mutilated body that has been dead for five days. Can the finding of the body be used in court?
4. Police get an anonymous tip that Joe Smith is a drug dealer, that he goes to Florida and gets drugs and returns them to Alabama, and that he has been bragging about it. Joe goes to Florida and meets his family to drive home with them. Can police stop and search him?
5. Police have a warrant for a house to seize electronic equipment. They find cocaine in a pill box in the medicine cabinet. Can they use it in court?
6. John looked drowsy in class. Suspecting drug use, his teacher decided to search his locker and found drugs in it. Can these be used in court against John?
7. Police crossed a fence and several barbed wire fences and a wooden fence. They peeked into a garage away from the house and saw many drugs. They confiscated the drugs. Can they use them in court when they did not have a search warrant?
8. Shawn is entering the country from a trip to Mexico. Police officers stop him because they suspect that he is carrying drugs inside of his body. They do not have a warrant or probable cause. Can they keep him until he goes to the bathroom?
9. Police fly over a house and use a high technological camera to take pictures of a marijuana plant growing in a planter on your deck. They do not have a warrant. Can they now get one and arrest you?

## **RIGHTS OF THE ACCUSED**

### **THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90's\_\_\_\_\_**

#### **ANSWER KEY: Fourth Amendment Discussion Questions**

1. Upon stopping a car full of teenagers, a police officer smells the odor of alcohol. Can he search the vehicle? People inside? Containers inside? Trunk? (Make sure to give reasons for your answers.)

*Yes, he has probable cause and may search all of the above. CO vs. Bertine (1987) (Trunk is questionable until arrest.)*

2. You tell Mary on the phone that you robbed a Tom Thumb store. Police may use testimony gathered from tapping your phone without a warrant? Does it matter if it is a cordless phone?

*Police can not use testimony from a phone without a warrant. Katz v. U.S. (1985) But if you were using a cordless phone they could, because you are using public airways. State v. Delaurier (1985)*

3. Police enter a home without warrant or consent. They are not in "hot pursuit," and they discover a mutilated body that has been dead for five days. Can the finding of the body be used in court?

*No. The exclusionary rule would disqualify the use of evidence found without a warrant.*

4. Police get an anonymous tip that Joe Smith is a drug dealer, that he goes to Florida and gets drugs and returns them to Alabama, and that he has been bragging about it. Joe goes to Florida and meets his family to drive home with them. Can police stop and search him?

*Yes. Even though the informer was never known, enough evidence was found relating to the tip to give cause for the search. Alabama v. White (1990)*

5. Police have a warrant for a house to seize electronic equipment. They find cocaine in a pill box in the medicine cabinet. Can they use it in court?

*No. The cocaine was not in "plain view."*

6. John looked drowsy in class. Suspecting drug use, his teacher decided to search his locker and found drugs in it. Can these be used in court against John?

*Yes! The court ruled in New Jersey v. T.L.O. that the school is a special situation and you do not need probable cause but only need reasonable suspicion for a legal search.*

7. Police crossed a fence and several barbed wire fences and a wooden fence. They peeked into a garage away from the house and see many drugs. They confiscated the drugs. Can they use them in court when they did not have a search warrant?

*Yes! U.S. vs. Dunn (1987) ruled in a similar case that this was not a person's home so that it did not constitute a legal search.*

## **RIGHTS OF THE ACCUSED**

### **THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90's**\_\_\_\_\_

#### **ANSWER KEY: Fourth Amendment Discussion Questions cont.**

8. Shawn is entering the country from a trip to Mexico. Police officers stop him because they suspect him of carrying drugs inside of his body. They do not have a warrant or probable cause. Can they keep him until he goes to the bathroom?

*Yes! U.S. vs. Hernandez (1985) held a lady on suspicion for 16 hours until she did actually pass eight balloons of narcotics. 20 minutes is the normal maximum for a momentary stop.*

9. Police fly over a house and use a high technological camera to take pictures of a marijuana plant growing in a planter on your deck. They do not have a warrant. Can they now get one and arrest you?

*Yes! State v. Nevler (1985) This means was used and evidence accepted. Satellite photos are the only technology currently classified as government only.*

**RIGHTS OF THE ACCUSED**

**THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90'S\_\_\_\_\_**

**OVERHEAD: The Fourth Amendment: Trends in the 1990's**

**I. EXPANDING THE LEGALITY OF SEARCHES WITHOUT WARRANTS.**

- A. Consensual Encounters -- (no justification needed)
- B. Brief Seizures -- (minimal cause needed)
- C. Arrest -- (probable cause needed)

**II. REDUCING THE LEVEL OF SUSPICION REQUIRED FOR A VALID SEARCH.**

- A. Probable Cause
- B. Good Faith
- C. Reasonable Suspicion

**III. ENTIRELY ELIMINATING INDIVIDUAL SUSPICION IN SOME CASES.**

## RIGHTS OF THE ACCUSED

### THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90's \_\_\_\_\_

#### TEACHER NOTES: The Fourth Amendment: Trends in the 1990's

##### 1. EXPANDING THE LEGALITY OF SEARCHES WITHOUT WARRANTS.

- A. *Consensual Encounters* -- (no justification needed)
- B. *Brief Seizures* -- (minimal cause needed) reasonable
- C. *Arrest* -- (probable cause needed)

1A. To be considered a *consensual encounter*, a reasonable person must feel free to leave or end encounter. Police are free to ask you questions, such as identification as well as other questions. You do not need to answer the questions. Key issues are: did the police summon the person, how did the police act, did police show any weapon, and what kind of voice did police use.

1B. What constitutes a *brief encounter and minimal cause*? In this situation, the person does not feel entirely free to leave but also doesn't feel arrested.

1C. The key term is *probable cause for arrest*. Much police discretion is used here when police are in "hot pursuit" Recall cases you just discussed to show these things.

**KEY POINT:** In practice, the Supreme Court has expanded the search area by expanding the term reasonable person to be an incredibly snoop and technological person. By limiting a person's reasonable expectation of privacy, the Court opens up more areas for searches without warrants.

**DISCUSS:** How is this affecting a person's personal privacy. How much can be learned about you from your garbage, phone, and personal checks.

##### II. REDUCING THE LEVEL OF SUSPICION REQUIRED FOR A VALID SEARCH.

- A. *Probable Cause*
- B. *Good Faith*
- C. *Reasonable Suspicion*

*Probable Cause* by definition is stated to occur when the facts are such that a reasonable person would be more likely than not to believe the situation occurred.

A question always arises as to what a reasonable person would believe.

Early tests for this had two criteria: 1) Can the informant be trusted? 2) Is the informant's information solid? (Not just a rumor.)

In 1983, this changed to accept using one criterion if substantial information existed in this one area. For example, if a questionable source seemed very well informed, the criteria used could be the extent of the information.



## RIGHTS OF THE ACCUSED

### THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90'S\_\_\_\_\_

#### TEACHER NOTES: The Fourth Amendment: Trends in the 1990's cont.

In 1984, this criterion was changed to *Good Faith* by the Warren Burger court.

This changed once again in 1990 when the Court looked at *Reasonable Suspicion* in the *Alabama vs. White* decision. The Court now allows a criminal profile to show reasonable suspicion.

#### III. ENTIRELY ELIMINATING INDIVIDUAL SUSPICION IN SOME CASES.

Administrative procedures may now take rights away from groups of people even when suspicion exists.

*Terry v. Ohio* (1968) Stopping people on street with reasonable suspicion for investigatory purposes.

*New Jersey v. T.L.O.* (1985) School in New Jersey was ruled to have special needs, allowing search of students with reasonable suspicion.

*Skinner v. Railway Labor Executives Assn. et al.* (1989) Mandatory drug testing of train operators is permitted.

*Treasury v. Von Ran* (1989) Mandatory drug testing for certain government workers is permitted.

Sobriety check points provide the most recent example of administrative procedures infringing on rights absent suspicion.

#### SUMMATION: Discuss Questions:

1. Does each decision affect an individual's rights? How?

Answer: Each decision gives either government or the individual more rights.

2. What benefits do we receive when government has more power than individual rights?

Answer: Public safety.

3. What benefits do we receive when individuals have more rights?

Answer: Personal freedom.

4. What areas of person privacy are affected by search and seizure?

Answer: Telephone, mail, property, house, person, job, etc.

5. On what principles are our Bill of Rights based?

Answer: Personal freedom and strong individual rights. 100 guilty may go free if we can save 1 innocent person from going to jail. (Does America support this statement? Should it?)

(This information is based on a lecture presentation by Professor Ed Butterfoss, Hamline University School of Law, July 1991.)



## RIGHTS OF THE ACCUSED

### THE LOVE NOTE: AN INTRODUCTORY LESSON ON THE FOURTH AMENDMENT \_\_\_\_\_

# The Love Note: An Introductory Lesson on the Fourth Amendment Right of Privacy by Doug Johnson

This discussion activity and review of *California v. Greenwood* can be used to build interest and promote debate on the constitutional right of privacy.

#### Students will:

1. Analyze the right of privacy at both a personal and governmental level.
2. Recognize the relationship between constitutional decisions and personal liberties.
3. Understand the 4th Amendment and the purpose of warrants.

**Materials needed:** Copies of: 4th Amendment (see Appended Materials)  
CASE SUMMARY: *California v. Greenwood* (optional)

**Time needed:** 1 day

**Grade level:** 7th - 12th grades

#### Procedure:

1. The day before this activity arrange to have a student "actor" in the class perform this scene.

At the beginning of class and after the students are seated, the student actor comes in and in an emotional state, discards what is obviously a personal note in the trash, tearing it in 4 pieces. The class and teacher both observe this. After the "actor" is seated, the teacher retrieves the note and begins to reassemble and read the note. The student actor protests that it is none of the teachers business and demands the note back. This scene should become emotional so the students form instant opinions siding with either the teacher "You put it in the trash so anyone can read it" or the student "I tore it up because I didn't want anyone to read it."

2. At this point the teacher should open up the discussion to the class. Who is right?
3. After hearing various opinions refer students to the **Fourth Amendment**. Continue the discussion with questions like these:

## RIGHTS OF THE ACCUSED

### THE LOVE NOTE: AN INTRODUCTORY LESSON ON THE FOURTH AMENDMENT \_\_\_\_\_

#### Procedure cont.

- A. Does Amendment 4 give enough information to solve this dispute?
- B. The 4th Amendment deals with the relationship between citizens and the state. Does a teacher represent the state?
- C. Does the privacy in the 4th Amendment include school waste baskets?
- D. Is trash every private?
- E. What if it is sealed in a plastic garbage bag and set out for collection on the street?

4. Read to the students or explain the synopsis of the Supreme Court decision in *California v. Greenwood*. **DO NOT** tell the class that Mr. Greenwood was convicted of drug trafficking.

*California v. Greenwood* 108 SCt. 1625 (1988)

#### Held:

1. The Fourth Amendment does not prohibit the warrantless search and seizure of garbage left for collection outside the curtilage of a home.

(a) Since respondents voluntarily left their trash for collection in an area particularly suited for public inspection, their claimed expectation of privacy in the inculpatory items they discarded was not objectively reasonable. It is common knowledge that plastic garbage bags left along a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through it or permitted others, such as the police, to do so. The police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public.

5. Continue the discussion, asking students if the police or a teacher should be able to sift through garbage to find evidence of a crime for which they do not have enough probable cause to obtain a warrant. Finally, by show of hands, have students demonstrate which side they are on.

6. After they seem to have decided, tell them that the United States Supreme Court has decided a case concerning criminal evidence gathered from garbage. Describe to them the parts of the case as presented in excerpts taken from the Supreme Court's opinion in *California v. Greenwood*. (See CASE SUMMARY: *California v. Greenwood*.)

## RIGHTS OF THE ACCUSED

### THE LOVE NOTE: AN INTRODUCTORY LESSON ON THE FOURTH AMENDMENT \_\_\_\_\_

#### Procedure cont.

Ask them how many now feel it was correct for the police to search through the trash without a warrant? If they have changed their minds after reading the **CASE SUMMARY** and finding out Mr. Greenwood was convicted of drug trafficking, ask:

1. Why should a drug traffic conviction make a difference?
  2. Why do cases of constitutional rights often center around criminal activities?
  3. If the court had said Mr. Greenwood's trash was private, what would have happened?
  4. Why didn't the police obtain a search warrant to go through the trash?
  5. What is the purpose of a search warrant?
7. Now explain to the class that not all of the judges agreed with the *Greenwood* decision. Describe the dissenting opinion of Justice Brennan.

*A single bag of trash testifies eloquently to the eating, reading, and recreational habits of the person who produced it. A search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health, and personal hygiene. Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target's financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests. It cannot be doubted that a sealed trash bag harbors telling evidence of the "intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" which the Fourth Amendment is designed to protect.*

#### Conclusion:

Ask the students to compare the *Greenwood* case to our student actor? How does the *Greenwood* decision affect the average citizen? This can be done in discussion or in the form of an essay.

## RIGHTS OF THE ACCUSED

### THE LOVE NOTE: AN INTRODUCTORY LESSON ON THE FOURTH AMENDMENT \_\_\_\_\_

#### **CASE SUMMARY: *California v. Greenwood*** 108 S.Ct. 1625 (1988)

In early 1984, Investigator Jenny Stracner of the Laguna Beach Police Department received information indicating that respondent Greenwood might be engaged in narcotics trafficking. Stracner learned that a criminal suspect had informed a federal drug-enforcement agent in February 1984 that a truck filled with illegal drugs was en route to the Laguna Beach address at which Greenwood resided. In addition, a neighbor complained of heavy vehicular traffic late at night in front of Greenwood's single-family home. The neighbor reported that the vehicles remained at Greenwood's house for only a few minutes.

Stracner sought to investigate this information by conducting a surveillance of Greenwood's home. She observed several vehicles make brief stops at the house during the late-night and early-morning hours, and she followed a truck from the house to a residence that had previously been under investigation as a narcotics trafficking location.

On April 6, 1984, Stracner asked the neighborhood's regular trash collector to pick up the plastic garbage bags that Greenwood had left on the curb in front of his house and to turn the bags over to her without mixing their contents with garbage from other houses. The trash collector cleaned his truck bin of other refuse, collected the garbage bags from the street in front of Greenwood's house, and turned the bags over to Stracner. The officer searched through the rubbish and found items indicative of narcotics use. She recited the information that she had gleaned from the trash search in an affidavit in support of a warrant to search Greenwood's home.

Police officers encountered both respondents at the house later that day when they arrived to execute the warrant. The police discovered quantities of cocaine and hashish during their search of the house. Respondents were arrested on felony narcotics charges. They subsequently posted bail.

The police continued to receive reports of many late-night visitors to the Greenwood house. On May 4, Investigator Robert Rahaeuser obtained Greenwood's garbage from the regular trash collector in the same manner as had Stracner. The garbage gain contained evidence of narcotics use.

Rahaeuser secured another search warrant for Greenwood's home based on the information from the second trash search. The police found more narcotics and evidence of narcotics trafficking when they executed the warrant. Greenwood was again arrested.

**Minnesota v. Ronald Riff: A Criminal Mock Trial**  
**by Pat Curran and Gary Strauch**

Students will explore the right of the accused to due process by participating in a mock trial. Special emphasis will be placed on the application of the Fourth Amendment.

**Students will:**

1. Learn about the people involved in the criminal justice system by roleplaying a judge, attorneys, witnesses, and jury members in a mock criminal trial.
2. Learn and demonstrate knowledge of simplified rules of evidence by:
  - a. making objections
  - b. ruling on objections
  - c. testifying in accordance with the rules of evidence
  - d. completing rules of evidence worksheets
3. Read and discuss guidelines for legal searches both with and without warrants and discuss several hypothetical variations of the search conducted by Officer Terry Schield in the simulation.

**Materials needed:** Copies of: **Simulation Casebook: MINNESOTA V. RONALD RIFF**  
**Student Handbook: SEARCH AND SEIZURE**  
**Student Handout: HYPOTHETICAL SEARCH SITUATIONS**  
**Student Handouts: RULES OF EVIDENCE WORKSHEETS NUMBER 1 AND NUMBER 2**

**Time needed:** 10-15 class periods

**Grade level:** 9th - 12th grade

**Procedure:**

**Day 1-3:** Introduce the **CASEBOOK**, explain roles, read case summaries and assign roles.

**Day 4-6:** Divide class into prosecution and defense groups, learn roles, practice direct and cross-examination.



**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL** \_\_\_\_\_

**Procedure cont.**

**Day 7-8:** Learn rules of evidence. Complete Students Handouts: **RULES OF EVIDENCE WORKSHEETS NUMBER 1 AND NUMBER 2.** Practice making ruling on objections.

**Day 1-12:** Conduct Mock Trial

**Day 13-15:** Have students read Student Handout: **SEARCH AND SEIZURE** and complete Student Handout: **HYPOTHETICAL SEARCH SITUATIONS.** Discuss.



**Student Handout: SEARCH AND SEIZURE**

**Search and Seizure with a Warrant**

The police officer needs to conduct searches to gather evidence against persons suspected of crimes. In interpreting the Fourth Amendment, the Courts have set down general guidelines for issuing search warrants for searches and seizures. To get a search warrant, the person - usually a police officer, must have **PROBABLE CAUSE**. This means that he/she has facts and information that provides a good reason to believe that a search is justified. The officer must swear under oath that the information he/she is giving is true to the best of his/her knowledge. The search warrant must specifically describe the person or place to be searched and the items to be seized. This warrant does not authorize a **GENERAL SEARCH**. This warrant must be issued by a judge.

**Searches and Seizures without a Warrant**

The courts have recognized that there are some situations in which a search can be conducted without a search warrant.

1. **LAWFUL INSPECTION:** airport and border searches.
2. **CONSENT:** A person (suspect) agrees to be searched without a warrant or probable cause.

**Example:** Two police officers knock on the door of a home. The owner of the house answers the door. The officers ask to search the room of the woman's sixteen year old son for narcotics. The officers say: "You need not give consent if you do not wish to. The search will not be made if you do not consent. If you consent, anything we may find may be used against your son in criminal prosecution."

The father gives consent, and the officers find some narcotics under the son's pillow.

3. **INCIDENT TO LAWFUL ARREST:** Police search a lawfully arrested person for weapons or evidence before it is destroyed.

**Example:** A person breaks into a drugstore window and sets off a burglar alarm. An officer, responding to the alarm, arrives just as the burglar is climbing into his car. The officer arrests the burglar and searches his car, finding watches, electric razors, and other items possibly stolen from the drugstore or other stores.

4. **EMERGENCY:** Situations such as bomb threats and fires when there isn't time to get a warrant.

## **RIGHTS OF THE ACCUSED**

### **MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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#### **Student Handout: SEARCH AND SEIZURE cont.**

**Example:** Neighbors call the police to report that they have not seen a seventy year old man in or around his home for the past two days. The neighbors say they are worried because he lives alone and had a heart attack a few years previously.

When the officers approach the house, they see the newspapers from the last two days at the front door. After ringing the door bell and knocking at the front and back doors, they look in and knock on the window. Finding all the doors and windows locked, they break a window and enter.

**5. PLAIN VIEW:** Objects related to a crime are in plain view of an officer during lawful performance of his/her duty.

**Example:** A police officer is asked to go to a residence because of a complaint from a neighbor. The police officer is waiting for someone to answer the door, the officer observes controlled substances on the kitchen table. The officer also observes people using different methods of ingesting these substances. The officer goes into the house and arrests the people for illegal use of a controlled substance.

**6. STOP AND FRISK:** A police officer stops a person when the officer has good reason to believe the person has weapons and is acting suspiciously. Personal safety of the officer and the public good allow the police to stop and frisk.

**Example:** An officer sees three men on a street corner. The three men take turns walking up and down the street. They go into a store on the street and then meet outside and confer. After they have done this numerous times, the police officer approaches them, identifies himself/herself as a police officer and asks them for identification. The individuals give inarticulate responses. The officer fearing that they may be armed, pats them down and finds guns on two of the three individuals. The officer arrests the two individuals for having concealed weapons. (The arrest was based on years of experience as a police officer. This experience lead him/her to believe that these individuals were acting in a manner that might suggest they were "casing" the store for a robbery. The officer feared for his life and the well being of the public.)

**7. SEARCHING AN AUTOMOBILE FOR ILLEGAL ITEMS:** If an officer has good reason (probable cause) to believe an automobile contains illegal items he/she may conduct a legal search of the automobile. An automobile requires less probable cause than a residence because evidence in an automobile may be moved and destroyed.

**Example:** A police officer is given information by a reliable informant that an individual has a large amount of cocaine in his car. The informant identifies the individual and the automobile. The police observe the automobile and make a positive identification. They stop the car and search it for the cocaine.

## RIGHTS OF THE ACCUSED

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#### Student Handout: HYPOTHETICAL SEARCH SITUATIONS

1. Use the information contained in the *prosecution witness sheets* in the CASEBOOK to gather information designed to help Officer Terry Schield of the Midtown, Minnesota Police Department to obtain a warrant for the search of the home of Ronald Riff, a suspect in the burglary of Marquette's Market.

- A. What do you think Officer Terry Schield would expect to find at the Riff residence?
- B. From which witnesses did Officer Schield obtain information to convince him/her that these items are probably in the Riff home? Rate the reliability of each of these witnesses.
- C. What information would be included on the warrant that Officer Schield is trying to obtain?
- D. List two situations in which Officer Schield could conduct a legal search without a search warrant.
- E. If Officer Schield searches the home of Ronald Riff illegally, and finds absolute proof that Riff burglarized the market, should the proof be allowed to be used in court? Why or why not?

2. Examine the following hypothetical situations and decide if Officer Schield is conducting a legal search or not, and state facts from the **Student Handout: SEARCH AND SEIZURE** to support your answer.

- A. Officer Schield knocks on Riff's door. Riff answers the door and invites the officer in. The officer spots the money bag and hammer on Riff's kitchen table.
- B. Officer Schield knocks on Riff's door. No one answers the knock. The officer tries the door and discovers that it's unlocked. He/she enters the house and conducts a complete search.
- C. Officer Schield knocks on Riff's door. Riff is not home but his mother answers the knock. She gives the officer permission to search her son's room. He/she finds a money bag, a hammer and several checks made out to Marquette's Market in Riff's room.
- D. Officer Schield does not search Riff's home, but does a search of the trash can in the alley at the rear of the house. The officer finds the money bag, a hammer, and checks made out to Marquette's market.
- E. Officer Schield conducts a search of the bushes along the property line between the Riff home and Betty Biddy's house next door, where he/she finds the items listed in the example above.

## **RIGHTS OF THE ACCUSED**

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#### **Student Handout: HYPOTHETICAL SEARCH SITUATIONS cont.**

- F.** Officer Schield spots Riff exit the rear door of Marquette's Market at 12:25 a.m. Riff is carrying a money bag and hammer. The lock on the rear door of the market has clearly been smashed. Schield arrests Riff and searches the bag. He/she finds \$910.00 and several checks made out to Marquette's Market in the bag.
- G.** Officer Schield stops Riff's vehicle for failure to yield as he exits the alley behind Marquette's Market. The officer's search of the car turns up the \$910.00, the money bag, the hammer, and the checks made out to the market.
- H.** Officer Schield, with an arrest warrant, enters Riff's home and makes an arrest. He/she then conducts a search of the house. In the attic, Schield finds the money bag, hammer, and checks made out to the market.
- I.** Officer Schield sees Ronald Riff acting in a suspicious manner in the alley behind Marquette's Market. He asks Riff a few questions, to which Riff fails to respond. The officer then frisk searches Riff and in the pocket of Riff's jacket finds a hammer and money bag containing \$910.00 and several checks.
- J.** Ronald Riff lives in apartment 22B. Officer Schield mistakenly lists the address on a search warrant as 22A. The officer uses the warrant to search the Riff apartment and finds the money bag, hammer, and cash.
- K.** Based upon a tip from a reliable informant, Officer Schield goes to the R.V. in which Riff lives. Fearing that Riff might soon leave, Schield searches the R.V. without a warrant and finds the money bag, \$910.00, the hammer and the checks.
- L.** Officer Schield pretends to be a person willing to cash checks made out to others. Riff invites the officer into his home for a discussion. The officer conducts a search of Riff's kitchen while Riff is elsewhere in the house. The officer finds the money bag, \$910.00, the checks and the hammer.
- M.** Riff spots officer Schield following him from the market. Riff runs to his house with the officer in pursuit, the officer enters Riff's home and searches Riff. He/she finds the money bag, \$910.00, hammer and checks.



## RIGHTS OF THE ACCUSED

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#### ANSWER KEY: Hypothetical Search Situations

- 2. A. This is a legal search under the plain view doctrine. *Coolidge v. New Hampshire*.
- 2. B. This is an illegal search of a home without a warrant. *Mapp v. Ohio*.
- 2. C. This is a legal search because of parental consent. *Schneckloth v. Bustamonte*.
- 2. D. Not considered a search by the court due to lack of a reasonable expectation of privacy. *California v. Greenwood/ Katz v. United States*.
- 2. E. Not a search. (See 2.d.)
- 2. F. This is a legal search incident to lawful arrest. *Chimel v. California*.
- 2. G. Legal search of a vehicle. Vehicles require less probable cause because they can be moved and evidence destroyed. *Bailey v. United States*.
- 2. H. Illegal search of the house. The arrest warrant only allows the police officer to search the area within the suspects reach. *Chimel v. California*.
- 2. I. This is a legal frisk search based on suspicion, danger to the officer, and danger to the public. *Terry v. Ohio*.
- 2. J. This is a legal search because the police officer acted in good faith. *Maryland v. Garrison*.
- 2. K. This is a legal search of a vehicle. *California v. Carney*.
- 2. L. This is a legal search based on trickery (undercover police officer posing as a drug buyer). *Lewis v. United States*.
- 2. M. This is a legal search because the police were in "hot pursuit" of a suspect. *Warden v. Hayden*.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

## Student Handout: RULES OF EVIDENCE WORKSHEET NUMBER 1

**DIRECTIONS:** The following statements have been given on the witness stand. Read each statement carefully and decide if it is *admissible* or *inadmissible* based on the Rules of Evidence. If you decide the statement constitutes inadmissible evidence, give the Rule(s) of Evidence that was violated.

**1. CROSS EXAMINE BY THE DEFENSE ATTORNEY-**

*"Isn't it true that the defendant was wearing a green jacket when you saw him?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**2. DIRECT EXAMINATION BY THE PROSECUTION ATTORNEY-**

*"Officer Badge, entry into the drug store was made through the broken window, wasn't it?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**3. WITNESS TESTIMONY DURING CROSS EXAMINATION-**

*"The defendant has never been arrested before and is a good student at Midtown High School."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**4. CROSS EXAMINATION BY THE DEFENSE ATTORNEY-**

*"On the night of the alleged burglary the bartender stopped serving drinks at 6:45 P.M., isn't that true?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**5. WITNESS TESTIMONY DURING DIRECT TESTIMONY-**

*"The next morning when I heard about the drug store being broken into I reported to the police that I had seen the defendant in the area of the break in the night of the crime."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:



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**Student Handout: RULES OF EVIDENCER WORKSHEET NUMBER 1 cont.**

**6. WITNESS TESTIMONY DURING DIRECT EXAMINATION-**

*"The knife I sold to the defendant could have been used to pry open the cash register and drug cabinet in the drug store."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**7. WITNESS TESTIMONY DURING DIRECT EXAMINATION-**

*"The defendant ran underneath the light in the alley, and I saw his band jacket from the back."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**8. DIRECT EXAMINATION BY THE PROSECUTION ATTORNEY-**

*"Isn't it true that Ronnie Riff is the best guitar player in Midtown?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

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**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL** \_\_\_\_\_

**Student Handout: RULES OF EVIDENCE WORKSHEET NUMBER 2**

**DIRECTIONS:** The following statements have been given on the witness stand. Read each statement carefully and decide if it is *admissible* or *inadmissible* based on the Rules of Evidence. Give the Rule(s) of Evidence that has been violated and a brief explanation.

**1. CROSS EXAMINATION BY DEFENSE ATTORNEY-**

*"Isn't it true, Mr. Ripple, that on the night of the alleged burglary you had been drinking?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**2. DIRECT EXAMINATION BY PROSECUTION ATTORNEY-**

*"I've lived next door to the Riff family all of my life. I've watched Gordy grow up. He is a nice boy and would never rob anyone."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**3. DIRECTION EXAMINATION BY PROSECUTION ATTORNEY-**

*"I saw the Riff kid in front of the drug store at about 12:30 A.M., right before he robbed it."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**4. DIRECT EXAMINATION BY DEFENSE ATTORNEY-**

*"Ben Leick told me that he heard from Don Burroughs that Ronnie Riff had lost a great deal of money at Red's Pleasure Palace."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**5. WITNESS EXAMINATION BY DEFENSE ATTORNEY-**

*"The day after Ronnie Riff burglarized my store, he was arrested."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

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**Student Handout: RULES OF EVIDENCE WORKSHEET NUMBER 2 cont.**

**6. WITNESS TESTIMONY DURING DIRECT EXAMINATION-**

*"I think the hammer taken by the defendant from my auto repair shop was the object that was used to break into the cash register." (witness is Rusty Fender - auto body repair person)*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**7. WITNESS TESTIMONY DURING DIRECT EXAMINATION-**

*"The defendant ran underneath the light in the alley and I saw his band jacket from the back."*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**8. DIRECT EXAMINATION BY THE PROSECUTION ATTORNEY-**

*"Isn't it true that the defendant is a person with a gambling problem who seldom pays his debts?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**9. DIRECT EXAMINATION BY PROSECUTION ATTORNEY-**

*"On the night of the alleged burglary, you saw Ronnie Riff in the alley behind the market?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**10. CROSS EXAMINATION BY THE DEFENSE ATTORNEY-**

*"On the night of the alleged burglary, the poker game broke up at 12:05 A.M., isn't that true?"*

ADMISSIBLE \_\_\_\_\_ INADMISSIBLE \_\_\_\_\_ REASONS:

**ANSWER KEY: Rules of Evidence Worksheet Number 1 and Number 2**

**Rules of Evidence Worksheet Number 1**

1. Admissible (leading questions during cross examination are proper.)
2. Inadmissible (leading questions on direct)
3. Inadmissible (character of the accused)
4. Admissible
5. Inadmissible (use of the word "crime" is a conclusion)
6. Inadmissible (opinion by a non-expert witness)
7. Admissible
8. Inadmissible (leading question on direct, calls for an opinion, is irrelevant)

**Rules of Evidence Worksheet 2**

1. Admissible
2. Inadmissible (opinion and character)
3. Inadmissible (conclusion)
4. Inadmissible (hearsay)
5. Inadmissible (conclusion)
6. Inadmissible (opinion)
7. Admissible
8. Inadmissible (leading question on direct, and character)
9. Inadmissible (leading)
10. Admissible

RIGHTS OF THE ACCUSED

MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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# Simulation Casebook

*Minnesota*



*Ronald Riff*

*Copyright 1981*

*Pat Curran and Gary Strauch*

*Oak-Land Junior High School*

*Lake Elmo, MN*



**RIGHTS OF THE ACCUSED**

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**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL** \_\_\_\_\_

**PLAYER ROSTER FOR: STATE OF MINNESOTA V. RONALD RIFF**

**JUDGE: HON. RICH CHAMBERS**

**PROSECUTION ATTORNEYS (2 OR 3)**

**DEFENSE ATTORNEYS (2 OR 3)**

**PROSECUTION WITNESSES (10):**

BETTY BIDDY

GUIDO CONCERTINO

RUSTY FENDER

SPEEDY MARQUETTE

MARTY MARTINI

OTIS RIPPLE

TERRY SCHIELD

C. SHARP

MELVIN STRONGARM

SOAPY WATERS

**DEFENSE WITNESSES (9):**

HAROLD ANGEL

VIBES BLARE

RED CHIPS

GIGI GIG

ACE HARTE

JACQUES ORBEDDER

RONALD RIFF

MATILDA SLICK

SALLY SLICK

**JURY MEMBERS: (2-8)**

**PROSECUTION CASE SUMMARY**

1. Defendant Ronald Riff left Red's Pleasure Palace, a gambling establishment on Devotion Avenue in Midtown, Minnesota, just after 12:00 A.M. the early morning of the alleged burglary.
2. Between 12:05 and 12:10 A.M. the defendant stopped at Rusty Fender's Body Shop at which time he stole a hammer.
3. Between 12:10 and 12:20 A.M. the defendant used the hammer to gain entry to Marquette's Market located on the corner of Main Street and First Street. Entry was gained by smashing the lock on the alley entrance of the store. The defendant obtained \$910.00 (in a cloth money bag) from the cash register in the store.
4. At about 12:20 A.M. the defendant left the store by the rear exit at which time he discarded the stolen hammer in the side alley between Marquette's Market and Art Own's Hardware.
5. The defendant then began to run to his home and was seen by Soapy Waters (who saw the defendant drop \$2.00 of the money) and Betty Biddy (who saw the defendant throw away the money bag).
6. The day after the alleged burglary the defendant used the stolen money to purchase a guitar at C. Sharp's Music City store. Included in the money he used for this purpose was a Canadian five dollar bill. (A bill identified by store owner Speedy Marquette as being in the store cash register the night before.)
7. Ronald Riff, the defendant, was arrested by Officer Schield at 3:30 P.M. the day after the alleged burglary.
8. The defendant, Ronald Riff, is being charged with the crime of breaking and entering and burglarizing Marquette's Market.

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**DEFENSE CASE SUMMARY**

1. Defendant Ronald Riff won over \$900.00 in a poker game between 8:30 P.M. and 12:00 A.M. the night of the alleged burglary.
2. Witnesses Sally Slick, Vibes Blare, Jacques Orbedder, Ace Harte and Red Chips all saw Ronald Riff win a great deal of money.
3. Ronald Riff called witnesses Matilda Slick and Gigi Gig and told them of his winnings also.
4. Included in the amount of money Ronald Riff won was a Canadian five dollar bill.
5. Ronald borrowed a tan cloth money bag from Red's Pleasure Palace in which to put his winnings.
6. Ronald left Red's shortly after 12:00 A.M. and began to walk home. He saw store owner Speedy Marquette in the alley behind Red's at that time.
7. Ronald took a hammer from Rusty Fender's to protect himself and his money.
8. Ronald never stopped by Marquette's market but he did toss away the hammer at that point as he began to run home.
9. As Ronald approached his back door, he began to count his winnings. He tossed the money bag away as he began to count.
10. Ronald had no motive to steal from Marquette's Market - he had won enough to pay off his debt to Vibes and buy his new guitar.

**RIGHTS OF THE ACCUSED**

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**ORDER OF PROSECUTION WITNESSES**

1. *Speedy Marquette* - owner and manager of Marquette's Market.
2. *Marty Martini* - bartender at Red's Pleasure Palace.
3. *Melvin Strongarm* - owner of a local dairy store.
4. *Rusty Fender* - owner of Rusty's Auto Body Shop.
5. *Otis Ripple* - nightshift baker at Midtown Bakery.
6. *Soapy Waters* - janitor at Mickey's Diner.
7. *Betty Biddy* - nurse at Midtown Memorial Hospital and neighbor of the defendant.
8. *C. Sharp* - owner of Sharp's Music City.
9. *Guido Concertino* - owner and operator of "Midtown Dance Magic" nightclub.
10. *Officer Terry Schield* - investigating officer.



**PROSECUTION WITNESS:**

***SPEEDY MARQUETTE-OWNER OF MARQUETTE'S MARKET***

1. Ronald Riff worked for me as a stock boy and part time cashier for about two years.
2. I paid Riff \$4.00 an hour and he worked twenty hours every week.
3. About once a month, Riff would try to get an advance on his pay check. He always said the same thing - that he needed the money to pay off gambling debts.
4. I fired Riff about three weeks before the alleged burglary because he was late for work. I found him in a poker game at Red's Pleasure Palace.
5. When I fired Riff he said, *"I'll get you for this, and put your lousy store out of business too."*
6. The night of the alleged burglary, I locked up the store at midnight after counting the money in the cash register. There was \$910.00. I put the money in a tan cloth bag from the Midtown State Bank. I was going to deposit the money the following morning.
7. I locked the money in the cash register, checked the rear door to make sure it was locked, turned off the lights, went out through the front door and locked it from the outside.
8. I was on my way home (about three miles from the store) when I remembered I left my apartment keys on the counter. I returned to the store to get them and arrived at 12:25 P.M.
9. As soon as I entered the store I realized it had been broken into. The rear door had been smashed open as was the cash register. The money bag was missing.
10. I called the Midtown Police Department and Officer Schield arrived at 12:35 P.M.
11. Yes, Ronnie Riff was dating my ex-girlfriend but that's not why I fired him. He just wasn't doing the job.
12. The day after the alleged burglary, Officer Schield returned and asked if there was anything unusual about the money that was stolen from the cash register. It was then I remembered the Canadian five dollar bill I had taken in the day before.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

**Marty Martini** - bartender at Red's Pleasure Palace

1. I've been the night bartender at Red's Pleasure Palace since Midtown passed the law legalizing poker games.
2. Red hired me to serve the players in the card room. The card room is in the back of the Pleasure Palace. The main entrance is on the south side of the service alley that runs behind the building.
3. The night of the alleged burglary Ronnie Riff came into the card room at about 8:00 P.M. He was a regular customer and I knew him pretty well.
4. The first thing he did when he came in is ask me for change for a fifty dollar bill. He said, *"I better win quick tonight, Marty, this is all I got."*
5. Riff took his change and went over to table number 1. There were five guys playing poker at the table and Ronnie joined the game.
6. Besides Ronnie I knew three of the other guys playing cards at table number one. Ace Harte was there and so was that Canadian truck driver, Jacques Orbedder, and Mel Strongarm was in the game that night too.
7. My job is to serve drinks to the card players so I visited the table about every 20 minutes or so. Ronnie wasn't losing money but judging by the pile of bills in front of him he wasn't winning too much either.
8. At about 11:00 P.M. Ronnie came up to the bar to buy a pack of cigarettes. I said, *"How you doing, Ronnie?"* He answered, *"O.K. I'm a few bucks to the good, but nothing to retire on."*
9. The poker game broke up early that night, it was about 12:00. Ronnie tried to talk the other guys into playing a little longer but they said no. I remember thinking Ronnie couldn't have done too well or he'd want to quit while he was ahead.
10. Ronnie came back up to the bar after the game broke up and changed all the coins he had into paper money. He had about \$30.00 in change.
11. After I gave him the paper money he said, *"Hey Marty, you got a bag I can have? I got a couple hundred bucks here and I don't want to lose it."* I told him I didn't have a bag, so he left by the alley door. It was a little after 12:00 A.M. when he left.
12. The night after the alleged burglary at Marquette's Market, Officer Schield came in and asked me about the card game. He said Ronnie told him he won over \$800.00 the night before. I told Schield it was probably more like \$150 - \$200 at most.

## RIGHTS OF THE ACCUSED

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#### Prosecution Witness:

*Melvin Strongarm* - owner of local dairy store

1. I have lived in Canton thirty two years.
2. I own and operate the local dairy. I took over the business from my father. It has been family owned and operated for the last four generations of Strongarms.
3. I have known the Riff family and I have gotten to know Ronnie by playing poker with him at Red's.
4. I like to play poker over at Red's three to four times a week. Ronnie is a regular at Red's. Ronnie is an okay poker player. Ronnie wins as much as he loses. An average player. The type of poker played at Red's is only small town poker and a super night might mean walking away with three to four hundred dollars. It sure isn't Las Vegas.
5. Ronnie won a few hands in the beginning of the night of the alleged burglary, but the pots weren't that big. In fact they weren't that big any time during the night. I won about two hundred and eighty dollars that night and was the big winner at our table. Ronnie lost about six hands in a row from about eleven o'clock on.
6. Ronnie could not have won more than a few hundred dollars. He lost almost every hand the last hour we played. I won the biggest pots of the evening and many more hands than Riff. He might have won a hundred, maybe two hundred max.
7. At about quarter to twelve Ronnie got up to use the pay phone and told me to deal him out of this hand. He also said with the way his luck had turned he would probably be better off not playing. We started the hand without him. As we anted Jacques ran out of U.S. money and started to use Canadian dollars. We all gave him a hard time about using "phony" money. I won that hand and the game broke up because no one wanted to take Jacques' money. It was the only hand where Canadian money was used.
8. The last half of the evening Ronnie couldn't buy a good hand. His luck changed from good to terrible.
9. The hands were different poker games like five card stud, seven card no peek, rotation and like that.
10. We played the first part of the evening with quarter and half dollar antes, but as the night went on we were betting dollar bills to raise. The pots were fifteen to twenty dollars max.
11. Ronnie came back to the table after his phone call and wanted to keep playing so he could try to win some of his money back, but the game broke up and he left Red's by the alley door. It was about midnight.
12. Most of the other players at the table won a few hands here and there throughout the night, but nothing to brag about. Jacques was the big loser.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

***Rusty Fender*** - owner of Rusty's Auto Body

1. I opened Rusty's Auto Body 27 years ago this coming August 1.
2. I've got a small but profitable business. It's located on Main Street with the garage entrance on the alley which runs between Main Street and Devotion Avenue.
3. I usually close up the shop about 5:30 P.M. each evening but the night of the alleged burglary I was working on a rush order. It must have been around 12:00 or a little later when Ronnie Riff stopped by.
4. He stood and watched me work for a few minutes but he didn't say much. I asked him how it was going and he said *"Not good. I just won a few bucks over at Red's but I need a lot more."*
5. He stood around for a few seconds more, watching me. I was working on this car right outside my garage right next to the alley. Ronnie said *"Hey, Rusty, it sounds like someone pounding on your front door."* I was pounding out a fender dent myself so I didn't hear anything, but I went to check.
6. I checked the front door but no one was there. I decided that as-long as I was in the office I would call my wife and tell her I probably wouldn't be home for another hour or so.
7. When I finished talking on the phone, I came out back to work on the car. When I got out there Ronnie was gone. I looked up and down the alley but he was no where in sight.
8. It was then that I discovered the hammer I was using was gone also. I thought maybe I had carried it into the office but it wasn't there either. I decided to quit for the night and go home. It was a little after 12:30 when I left for home.
9. The next day Officer Schield stopped by and told me he was investigating a possible burglary down the street at Marquette's Market. He asked me if I had seen anyone in the area.
10. I told the policeman that I had talked to Riff the night before and mentioned that I locked up at 12:30 cause I misplaced my hammer.
11. Schield left for a few minutes and then came back with my hammer. I identified it as the one I had been using the night before.
12. Schield told me that he'd have to keep the hammer as evidence.



**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**Prosecution Witness:**

***Otis Ripple*** - Nightshift baker at Midtown Bakery

1. I've worked at the Midtown Bakery for 22 years.
2. The Midtown Bakery is on the corner of Devotion Avenue and First Street. It is just south (across the alley) from Marquette's Market.
3. The night of the alleged burglary I was working my normal "night" shift from 10:00 P.M. to 6:00 A.M.
4. I took my break that night at 15 minutes after midnight. It was a warm spring evening and it was hot in the bakery. I decided to go out into the alley on my break to get some cool air.
5. I was sitting on the back steps of the bakery, when I noticed a light flickering in the market across the alley. I was about to take a closer look when someone came out the back door.
6. The person who came out the back door walked over to the southeast corner of the building and tossed something towards the trash cans between the store and Art Own's Hardware next door.
7. The person then walked back towards First Street. It was at that time I thought I recognized the person, it looked like Ronnie Riff, the kid that helps Mr. Marquette in the store. I yelled, "*Hi ya Ronnie!*" but he didn't answer. He just started running and disappeared to the left down First Street (south down First Street).
8. At about 1:00 A.M. Officer Schield knocked on the back door of the bakery. He told me that it looked like someone had burglarized the market across the alley. He asked me if I noticed anything unusual and I told him what I had seen.
9. I took him to the place where I saw the kid toss something towards the trash cans and we found a large hammer laying on the ground.
10. When Officer Shield asked if I could positively identify the person who I had seen, I refused to do so. It looked a lot like the defendant, Ronnie Riff, but I just couldn't be sure.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

#### *Soapy Waters* - Janitor at Mickey's Diner and neighbor of the defendant, Ronnie Riff

1. I'm a janitor at Mickey's Diner on Main Street in the city of Midtown, Minnesota.
2. On the night of the alleged burglary I got off work at 12:15 A.M. and began to walk home.
3. I live on Riff Avenue between First and Second Streets so I walked west down Main Street to First Street and then turned south on First.
4. When I got to the corner of First Street and the service alley which runs behind the Marquette Market and other businesses on Main Street the defendant ran into me and almost knocked me down. He had run from out of the alley.
5. When Riff ran into me I yelled at him and asked him what his hurry was. He said, *"None of your business old man."*
6. One thing I noticed about Riff was that he had a tan money bag in his right hand. When he ran into me he dropped two one dollar bills out of the bag which he didn't bother to pick up - he just ran on down First Street towards his house.
7. I yelled to Riff that He'd dropped something, but he didn't stop so I picked up the money myself and decided to have a few beers over at Tony's.
8. I left Tony's a little after 1:00 A.M. and started for home again and saw a squad car parked in front of Marquette's Market. Officer Schield was by the car and I asked him what was going on.
9. Schield told me the store had been burglarized, probably between 12:05 and 12:25. It was then I told him about Riff and his wad of money. He got a description from me.
10. Riff was dressed in blue jeans and a blue jacket. The jacket was one of those band jackets the kids around town wear.



## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

**Betty Biddy** - nurse at Midtown Memorial Hospital  
and Neighbor of Ronnie Riff

1. My name is Betty Biddy. I'm a nurse at Midtown Memorial Hospital. I work the evening shift in the coronary care unit.
2. On the night of the alleged burglary I got done with work at 12:15 A.M. I punched out on the time clock and walked to the hospital parking lot with a friend of mine. We talked for a few minutes, and then I got in my car and drove home.
3. I only live two blocks from the hospital so I got home around 12:25. I just got my car in the garage, which is behind my house and I was closing my garage door, when I saw someone running towards me.
4. I have two flood lights on my garage and they were on so the alley was well lighted for at least 35 to 40 feet in either direction.
5. The person in the alley was running right at me (coming from the east end of the alley and running to the west end). When the person got about 30 feet away I recognized that it was Ronald Riff, my next door neighbor.
6. I don't know if Ronnie saw me or not. I was standing next to my garage, sort of back in the shadows, so I doubt he saw me.
7. Ronnie was wearing blue jeans and his navy blue (dark blue) band jacket. I've seen the jacket many times before. It has the letters DWR on the front left hand side and it says "DEEP WATER REUNION" on the back. The letters are in white. He was carrying a bag in his right hand.
8. I watched Ronnie run by me towards the back door of his house. His whole back yard was lighted from my flood light.
9. Just before Ronnie got to his back door, he stopped. He opened the bag he was carrying and took something out of it. He then went to the line of bushes between my property and his and tossed the bag under the bushes. Then he went into his house.
10. I was curious as to why Ronnie would do that and I walked over to look at the bag he had thrown away. It was a cloth bag, tan in color, it was labeled with the words "Midtown State Bank."
11. The next day I was on Main Street shopping and saw Officer Shield. Someone told me he was investigating "last night's burglary." I said, "Was it the bank?" I said that cause I remembered the cloth bag that Ronnie had thrown away.
12. I overheard Officer Schield say something about a bag of money so I told him what I had seen. He went with me back to my house and we looked for the bag, but it was gone. I gave him a description of it and he wrote it down.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

**C. Sharp** - owner of Sharp's Music Store

1. I own and operate Sharp's Music City on Devotion Avenue.
2. I sell a variety of items in my store including records, tapes, recorders, stereos, and musical instruments.
3. I've known Ronnie Riff for several months due to his interest in purchasing a new guitar from my store.
4. About four months ago Riff gave me \$100.00 as a deposit on a guitar. He promised to have the remaining amount (\$875.00) in a few weeks.
5. Since that time he's been in my store a number of times, but never to pay the rest of what he owes on the guitar. Finally, a week or so before the alleged burglary of the Marquette Market, I told Riff that I would have to refund his deposit because another buyer was interested in the guitar.
6. Riff begged me to hold the guitar for him. He said he would get the money somehow - he said he'd have it within a week.
7. I refused to sell the guitar to Ronald Riff on a time payment plan after checking on his credit. I found that he had recently been fired from his job at Marquette's Market, that he made very little playing for that rock band he belongs to, and that he gambled a great deal and usually lost.
8. The morning after the alleged burglary of Marquette's Market, Ronald Riff arrived at my store. Riff got there at about 10:30 A.M. He was carrying a huge wad of bills -- mostly ones, fives and tens.
9. Riff counted out \$875.00 in cash on my counter. I refused to take one bill -- a Canadian five dollar bill, so he replaced it with a U.S. five.
10. When I asked Riff where he got all the money he said, *"Mr. Sharp, - I had the best card playin' night of my life last night. I just couldn't lose."*
11. Later in the day, Officer Schield came to my store and interviewed me about the alleged burglary. I told him I was at home at the time of the burglary so I didn't know anything about it. But, then, I mentioned all the money the Riff kid had given me that day.
12. When I told Officer Schield about the Riff kid he said, *"that name keeps coming up no matter who I talk to."* I then showed him the money and he noted the size of the bills. I mentioned the deal about the Canadian money Riff had tried to give me.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

**Guido Concertino** - owner/operator of "Midtown Dance Magic" nightclub

1. "Midtown Dance Magic" is a night club on Rt. 27, 3 miles north of Midtown City.
2. I've owned the nightclub for 3 years and since the time of purchase I've presented nightly live rock music in my dance hall.
3. One of the rock bands that performs at my dance hall is "Deep Water Reunion." Ronnie Riff is one of the members of that band. He plays guitar.
4. The manager of "Deep Water Reunion" is Vibes Blare, a 35 year old resident of Midtown City.
5. On a Wednesday night about a week before the alleged burglary I witnessed a shouting match between Ronald Riff and Vibes Blare.
6. The argument started when Ronnie Riff was late for Deep Water's first show. When Ronnie arrived Vibes asked him where he'd been and finally Ronnie admitted he was playing cards at Red's Pleasure Palace.
7. Vibes told Ronnie that if he was late again Ronnie could find another band to play for. Vibes said *"this kinda thing has happened once too often."*
8. Vibes also told Ronnie he had one week to get a new guitar or he'd be through with the band anyway.
9. After the argument I asked Ronnie what it was all about. He said Vibes had been after him for months to get a better guitar. He said that it would take over \$800 to get one and he had no way to get that kind of money.
10. The day after the alleged burglary of Marquette's Market I was working on my books at the dance hall and heard someone pounding on the front door.
11. It was Ronnie at the door, he had a brand new guitar and he wanted to practice playing it at the dance hall.
12. When Ronnie finished practicing I asked him how he got the guitar. I said it looked pretty expensive. Ronnie said it cost him over \$900 altogether. He said he got *"real lucky"* the night before.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Prosecution Witness:

*Officer Terry Schield* - investigating officer

1. I've been with the Midtown, Minnesota police force for 7 1/2 years.
2. Before coming to Midtown, I worked with the Caton City Police for 2 years.
3. At 12:30 A.M. the early morning of the alleged burglary, the desk sergeant on duty told me to investigate a possible burglary at Marquette's Market which is on the corner of Main Street and First Street in Midtown, Minnesota.
4. I arrived at Marquette's Market a few minutes later and talked briefly to owner Speedy Marquette. I then began investigating the alleged burglary. During the course of that investigation I discovered the following:
  - > the lock on the rear door of the market had been smashed open with a heavy, blunt object.
  - > the cash register drawer had been similarly smashed open and was empty except for \$7.83 in coin and two checks (one for \$10.00 and a second for \$5.80)
  - > in the alley next to the store I found a heavy hammer (wiped clean of finger prints)
5. In an interview with store owner Speedy Marquette I discovered the following:
  - > that \$910.00 had allegedly been taken from the cash drawer of the register.
  - > that the money had been placed in a tan cloth bag labeled "Midtown State Bank".
  - > that the alleged burglary would have had to have occurred between 12:00 A.M. and 12:25 A.M. that early morning.
  - > that included in the missing \$910.00 was a Canadian five dollar bill.
6. After talking to Mr. Marquette I checked the area outside the store. I found two people in the area: Soapy Waters, the janitor at Mickey's Diner, and Otis Ripple, the baker at Midtown Bakery.

Mr. Waters stated:

  - > he had seen Ronnie Riff in the area at about 12:20 A.M.
  - > that Riff had been carrying a tan money bag and had dropped two dollars from the bag.
  - > that Riff was wearing blue jeans and a blue band jacket.

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**Prosecution Witness: Officer Terry Schield - Investigating Officer cont.**

**Mr. Ripple stated:**

- > that at around 12:15 A.M. he had seen someone exit the market by the rear door.
- > he said the person threw something into the side alley east of the store.
- > he took me to the location and I found the hammer.
- > Ripple refused to positively identify the person he saw.

7. The morning after the alleged burglary, I questioned several other people in the area:
  - > Rusty Fender identified the hammer and mentioned he had seen Riff a little after 12:00 A.M. the night of the alleged burglary (in the alley behind Fenders Body Shop.
  - > Melvin Strongarm, who had played poker with Riff the night of the alleged burglary, and who stated Riff had won \$200.00 at most in the game.
  - > Marty Martini estimated Riff's winnings at poker at between \$150-200.
  - > Betty Biddy stated she saw Riff toss away a tan money bag at just after 12:25 A.M. the night of the alleged burglary. She stated the bag was labeled "Mid town State Bank," but we could not locate the bag in the area the next morning.
  - > C. Sharp stated Ronnie had purchased a guitar from Sharp's Music city the day after the alleged burglary for \$875.00. Riff paid cash and tried to include a Canadian five dollar bill in the payment.
  - > Guido Concertino stated Riff practiced at the "Midtown Dance Magic" club the day after the alleged burglary on a guitar worth about \$900.00.
8. I was unsatisfied with Riff's story when I questioned him the afternoon after the alleged burglary. I obtained a warrant and arrested Riff at 3:30 P.M. on that day. In his possession was a receipt from the Sharp Music City store for \$875.00



**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**ORDER OF DEFENSE WITNESSES**

1. *Sally Slick*: girl friend of defendant, Ronald Riff.
2. *Jacques Orbedder*: over-the-road trucker from Canada.
3. *Ace Harte*: professional gambler and acquaintance of defendant Riff.
4. *Vibes Blare*: employer of defendant Riff.
5. *Matilda Slick*: parent of the defendant's girl friend.
6. *Gigi Gig*: co-worker with the defendant in the "Deep Water Reunion" rock band.
7. *Red Chips*: owner of Red's Pleasure Palace, a gambling establishment in Midtown.
8. *Harold Angel*: employee at Marquette's Market.
9. *Ronald Riff*: defendant

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness:

*Sally Slick* - girl friend of defendant Ronnie Riff

1. I've been going with Ronnie Riff ever since I broke up with Speedy Marquette about five months ago.
2. Ronnie worked for Speedy at the market. After I broke up with Speedy he said, "*When Ronnie doesn't have any money you'll drop him and come crawling back to me.*" About 4 months later Speedy fired Ronnie.
3. On the afternoon of the alleged burglary, Ronnie and I had a date. We went to a movie and had a sandwich at Mickey's Diner, then we went over to Red's Pleasure Palace.
4. My mother didn't want me going out with Ronnie because of his card playing but I love to watch him play cards - it's exciting.
5. Ronnie started playing that night at around 8:00 P.M. I watched for about 2 1/2 hours. Ronnie was really lucky while I watched.
6. At 10:30 P.M. Ronnie got up from the table and came over to where I was sitting. Ronnie told me some of the guys at his table were complaining because I was watching.
7. Ronnie said the guys were complaining 'cause he was winning so much and they didn't like it. I told him I would leave so they would get off his back.
8. When I left, I told Ronnie to call me when the game broke up and let me know how much he had won. He told me that he had won about \$500 already - he said he'd have enough for his new guitar by 1:00 A.M.
9. I got home from Red's about 10:00. My mother asked where Ronnie was and I told her he was playing cards. She really got mad and started screaming at me for being over at Red's and for going out with Ronnie. I got sick of it and went up to my room.
10. At a little after 12:00 I heard the phone ring and then I heard my mother start yelling all over again.
11. A few minutes later she came up to my room and said, "*He says he won \$900. He must be awful lucky cause he sure ain't smart.*"

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness:

*Jacques Orbedder* - over-the-road trucker from Canada

1. I've worked for Yukon-Hudson Bay Transport Company for 12 years. The company headquarters are in Canada but I make weekly trips into Midtown in Minnesota.
2. Usually, when I'm in Midtown overnight, I play cards at Red's Pleasure Palace. It's the only place on my route that you can gamble legally.
3. The night of the alleged burglary, I got over to Red's card room by 7:30 P.M. I sat down at table number one and started to play poker.
4. Ronnie Riff and his girl friend come in about 8:00 P.M. Ronnie sat down at our table and started playing poker. His girl friend was sitting about ten feet away watching.
5. I've told Ronnie before about having his girl there. I hate it when someone watches us play cards.
6. Ronnie started winning the minute he sat down. He took about \$100 off me by 10:00 P.M. The more he won the madder I got about having his girl friend there.
7. Finally about 10:30 P.M. Ronnie's girl friend left, but it didn't change my luck any - I kept right on losing.
8. Right after his girl friend left, about fifteen minutes after, this Vibes Blare guy comes in to talk to Ronnie. Vibes wanted some money Ronnie owed him.
9. I saw Ronnie pay Vibes. Ronnie kept stuffing money in his pocket all night. When he paid Vibes he pulled it all out. That was when I realized how much Ronnie had won. He must have had \$500 in his pocket.
10. The game broke up about midnight. I had lost so much by then that I was out of U.S. money. I started playing with Canadian bills.
11. Some of the guys at the table complained about my Canadian money. I told them that it was worth 97 cents on the dollar, but if they didn't like it, I'd quit. That was when the game broke up - at about midnight.
12. When I left, Ronnie was putting his money in a bag. I think it was a tan paper bag but I'm not sure.

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**Defense Witness:**

***Ace Harte*** - professional card player and acquaintance of R. Riff

1. I moved to Midtown right after they legalized certain kinds of gambling in the town.
2. I'm a professional card player. I work out of Red's Pleasure Palace. I know the defendant because he plays cards in the Palace at least once a week.
3. At first Ronnie lost most of the time but lately he's become a very good poker player - not as good as me, but very good.
4. On the night of the alleged burglary Ronnie Riff, Jacques Orbedder, and I played cards at Red's Pleasure Palace at table number one. There were three other guys playing that night at the table but I don't remember their names.
5. Ronnie's girl friend was there that night watching Ronnie play. I told him I don't like that. People might get the wrong idea. Ronnie finally told her to leave around 10:30 P.M.
6. Ronnie was winning big that night. He took over \$125 off me. He kept shoving money in his pocket so he only had \$100 in front of him at any particular time.
7. Most everybody but Ronnie was losing that night. Starting at about 11:30 all Jacques Orbedder had left was Canadian money. The other guys gave him a rough time about passing "phoney" money on us.
8. At a little before midnight, Ronnie said he had to make a few calls. He took some change over to the pay phone in the corner.
9. When Ronnie got off the phone, we decided to break up the game. Ronnie was the only one who wanted to keep playing - I don't blame him.
10. When I left the Palace that night, Ronnie was talking to Red up in the office. That was about 12:00 A.M.
11. I told Officer Schield what had happened that night but he only talked to me for a few minutes and didn't write anything down.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness:

**Vibes Blare** - Manager of "Deep Water Reunion" Rock Band  
and Employer of the Defendant

1. I organized Deep Water Reunion rock band about 2 years ago. The band is one of the best in the Midtown area and getting better all the time.
2. Ronnie Riff started playing for us over a year ago. He's an above average guitar player.
3. Riff and I have had a few arguments lately. They've been about the same problem - him not showing up for rehearsal or not being on time for a show.
4. Riff's excuse is always the same - he's playing cards at Red's card room and loses track of the time. I finally told him to make a choice - cards or the band.
5. Riff's gambling has caused another problem too - he's always borrowing money. I've been after him since he joined the band to get a better guitar but he didn't have the money for that either.
6. About a week before the alleged burglary Riff was late for a show - I had it out with him right there in the dance hall. I told him one more time late and he was done. I also told him to pay up the \$50 he owed me and get a new guitar within two weeks.
7. The night of the alleged burglary I had dinner at Mickey's diner and a few beers at Tony's bar. I left Tony's about 20 minutes to eleven.
8. On the way home from Tony's I saw Sally Slick, Ronnie's girl friend coming out of Red's Pleasure Palace. She saw me and came over to talk.
9. Sally admitted that Ronnie was gambling again, but she said he was winning big money. She said if I didn't believe her I should go over and see for myself.
10. When I walked into Red's card room I saw Ronnie right away, he was playing cards with 5 or 6 other guys. He had about \$100 in front of him.
11. I watched Ronnie play for a few minutes, then he got up and came over to talk. The first thing he did was pull this big bank roll out of his pocket and peel off two twenties and a ten dollar bill.
12. He said he was over \$500 to the good and that he'd have enough money to buy a new guitar before he was done for the night.
13. I left Red's right after I talked to Ronnie. I got home at 11:00 P.M.



## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness:

*Matilda Slick* - Parent of the defendant's girlfriend

1. On the day of the alleged burglary, the defendant, Ronald Riff picked up my daughter Sally for a date.
2. He picked her up in the early afternoon they said they were going to a movie. I wasn't happy about her going out with him.
3. I don't like Ronnie, he can't keep a job and he spends all his time gambling or playing in that rock band. I wish Sally was still going out with Speedy Marquette, he's such a nice young man.
4. At a little before 11:00 Sally came in the house. She was alone. I said, *"Isn't Riff even gentleman enough to come in and say hello?"*
5. Sally said, *"Ronnie's still at Red's so he couldn't very well come in and say hello."*
6. I really got mad when she said that. To think he'd let her walk home in the dark, just so he could continue his wicked gambling.
7. I told Sally that Riff was no good, that she should stop going with him, but you can't tell that girl anything. Sally went up to her room and slammed the door.
8. At almost midnight the phone started ringing. I'm sure about the time because I remember thinking, *"Who would be so rude as to call at this hour."* Sure enough it was Ronald Riff.
9. I told Riff exactly what I thought of him but I don't even think he was listening. I could hear arguing in the background and someone kept saying, *"Don't try to pass off that lousy Canadian money around here."*
10. Finally Riff says, *"Just tell Sally I won big. Over \$900."* Then he hung up the phone without saying as much as good bye.
11. I went up to Sally's room and told her what Riff had said.
12. The next day when I heard about the alleged burglary, at first I thought - *"It doesn't surprise me a bit."* But then I found out that the store was supposedly burglarized after 12:00. I know Ronnie had the money before that time.
13. I told Officer Shield about Ronnie's call, but he arrested him anyway.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness:

**Gigi Gig** - singer with Deep Water Reunion Band  
and close friend of the defendant

1. I've known Ronnie since he joined the band over a year ago.
2. I've really worried about Ronnie lately. First he lost his job at the market and then he started gambling more and more.
3. Ronnie never seems to have enough money for anything but poker. He's been saving for a new guitar since he joined the band but all he's managed to save was \$100 for the down payment.
4. I heard the argument between Vibes and Ronnie about 2 weeks before the alleged burglary. When it was over I told Ronnie not to worry I'd buy the guitar and he could pay me back a little at a time.
5. I told Ronnie he'd have to do me a favor if I bought the guitar for him - he'd have to give up playing cards.
6. He told me to forget it then - that he'd come up with the money somehow.
7. On the night of the alleged burglary, at about midnight, I got a call from Ronnie. Right away I could tell where he was 'cause I could hear people playing cards in the background.
8. Ronnie asked me to meet him at C. Sharp's Music Store the next morning. He said he wanted to buy that guitar.
9. I figured Ronnie wanted me there to pay for it - I told him that I'd have to stop at the bank first to get money out of my savings account.
10. Ronnie just laughed. He said, "*You don't need any money, you just be there to watch me buy it.*" He said he won a ton of money playing cards.
11. The next morning I met him at the music store. I watched him count out the money on Sharp's counter. Ronnie got a bill of sale marked paid and his new guitar.
12. We left the music store and Ronnie asked me to go out to the dance hall with him - he said he wanted to practice with the new guitar. I told him I couldn't, that I had to meet someone for lunch.

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**Defense Witness:**

***Red Chips*** - Owner of Red's Pleasure Palace, A Gambling Hall in Midtown

1. As soon as Midtown legalized gambling I opened the palace. I offer honest games, good food and good service.
2. I've known Ronnie Riff since he started coming in to play cards. Lately he's been in at least once a week.
3. On the night of the alleged burglary I was in my office at Red's Pleasure Palace working on my books.
4. My office overlooks the card room in the back of the Palace. I can see the whole room through a window in the office.
5. Table one is just off to my right. I knew three of the players at the table: Ace Harte, Jacques Orbedder, and Ronnie Riff. Jacques and Ace started playing at 7:30, Ronnie came in with his girl friend at 8:00 P.M.
6. I didn't keep a real close watch on the table but I did notice that Ronnie was winning more than his share of the pots.
7. At about 10:30 there was an argument at the table and then Ronnie got up and talked to his girl friend and then she left.
8. About 10 or 15 minutes later Vibes Blare came in. He watched the game for a while and then Ronnie pulled him aside and gave him some money. It was then I saw how much Ronnie had won. He must have had at least \$200.
9. At about midnight another argument broke out. The players were complaining about Jacques Orbedder starting to play with Canadian money.
10. Ace Harte called to me and asked me what a Canadian dollar was worth. I looked it up and told him it was worth 97 cents in U.S. money.
11. I noticed that Ronnie wasn't at the table. I saw him on the pay phone near the card room exit.
12. At around midnight the game broke up Ronnie came up to the office and asked if he had a money bag he could borrow. I told him there were some old ones under the service bar.
13. Officer Schield questioned me about all this. He asked me if any of the bags were from the Midtown State Bank. I told him there might have been, but I doubted it. We bank at the National City Bank in the new shopping center.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness:

*Harold Angel* - Employee in Marquette's Market

1. I've worked for Speedy Marquette for several weeks. Marquette hired me the day he fired Ronnie Riff.
2. When I read about the supposed burglary of the market it just didn't make sense. When I told the police they weren't interested so I got in touch with Ronnie's attorneys.
3. First, everyone claims that there was over \$900 in the register. That just couldn't be true. Marquette takes most of the money we've made over to the bank every afternoon at 5:1 p.m. He usually leaves about \$75.00 in the cash register.
4. The store has never taken in more than \$200 - \$300 from 5:15 until closing time at midnight. There couldn't have been that much in the register.
5. Another thing that bothers me is the Canadian five dollar bill. Marquette says he took the bill the day of the alleged burglary. If he did, he was going against his own rules. He almost fired me when I took a one dollar Canadian bill. He made up a big sign and hung it up over the counter. The sign says "NO CANADIAN MONEY ACCEPTED."
6. The last thing that bothers me is that Marquette said he left the store for home a little after midnight. He always parks his car, a 1979 Pontiac Firebird, in the Devotion Church parking lot, between 1st and 2nd streets on Devotion Avenue.
7. I was at the high school gym that night, helping decorate for the spring dance. At about 12:00 midnight we finished decorating. I came out the Devotion Ave. door of the high school at 12:10 and there was Speedy's car sitting where it always does - right next to the church.
8. I remember, thinking, Speedy must be having a few at Tony's tonight cause he sure isn't working over time.
9. I sat down on the steps of the school and had a cigarette then I started walking for home. Just as I got to the corner of First and Devotion I saw Ronnie run by on the far side of 1st Street. He was heading for his house.
10. Maybe that doesn't look as good for Ronnie but remember, Speedy's car was still sitting in the Devotion Church lot. That doesn't look too good for Speedy either.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### Defense Witness: *Ronald Riff* - Defendant

1. The day of the alleged burglary I had \$58.00 to my name, and I owed \$50.00 of it to my band manager Vibes Blare.
2. That afternoon I called my girlfriend, Sally Slick, and asked her if she wanted to go out. We went to a movie and then got a sandwich at Mickey's Diner. I had \$50.00 and some change left.
3. I decided to go over to Red's card room and try my luck. I thought maybe I could win enough to pay back Vibes and still have some money to last until my next pay day.
4. Vibes told me he'd fire me from the "Deep Water Reunion Band" unless I bought a new guitar, but I wasn't worried about that because my friend Gigi said she'd loan me the money for it.
5. Sally and I got to Red's Pleasure Palace about 8:00 p.m. I got in a poker game with Ace Harte, Jacques Orbedder, and some other guys. Sally watched us play.
6. I started winning the minute I sat down at the table. I think that's why Ace, Jacques and those other guys started complaining about Sally watching the game -they were just mad because I was taking their money.
7. Finally, at about 10:30 p.m. I told Sally she'd better leave. I told her I must have won \$500.00 already. She said I should call her when the game was over and let her know how I had done.
8. About ten or fifteen minutes after Sally left, Vibes Blare came in. He looked mad cause I was playing cards. I got up from the table and pulled him over to one side. I handed him the fifty bucks I owed him. I said, "*Vibes, the way things are going tonight, I'll have a new guitar by tomorrow.*"
9. Vibes stopped being mad when he found out I was winning big. He took his fifty bucks and left. I got back in the game. This was a little before 11:00.
10. By midnight I figured I had won about \$800 or \$900. I took some change and went over to the pay phone and called Sally to let her know. Sally's mother answered the phone.
11. She started yelling at me for calling so late, for gambling, for taking Sally to Red's card room and for letting her walk home alone. That woman just doesn't like me. Finally I said, "*Mrs Slick, just tell Sally I won \$900.*" Then I hung up the phone.



## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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Defense Witness: *Ronald Riff* - Defendant cont.

12. Next I called Gigi Gig. I told her I wanted her to go with me to the music store the next morning to buy the guitar. She said she'd have to stop at the bank to get the money for it. I said, "*Gigi, I got the money, you just be there and watch me buy the guitar.*"
13. When I got back to the table the guys said they'd had enough. They were mad about Jacques Orbedder laying all that Canadian money on them. I think they were madder because I had all their money.
14. On my way out of the card room I stopped by Red Chip's office. I asked him if I could get a bag from him. He said there were some under the service counter. I grabbed a tan one and stuffed all my money in it. The bag had something written on it, but I didn't notice what.
15. I went out the alley door of the card room and headed for home. I saw Rusty Fender working on a car out in the parts yard next to the alley. I stopped to talk to him. I was going to brag a little about all the money I'd won but then I remembered the \$100 I owed him. He asked me, "*How's it going?*" I said "*not too good, Rusty.*"
16. I heard someone banging on Rusty's door. I told him and he went in. It was then I saw someone in the shadows behind Mickey's Diner. It looked like Speedy Marquette. I didn't want anyone hitting me on the head and taking my money. I grabbed an old hammer that was laying there and took off down the alley.
17. When I got near the corner of the alley and first street I tossed the hammer and kept running. I heard someone yell my name so I just kept running. Then I ran into that jerk, Soapy Waters.
18. Water's started yelling at me but I just kept running towards home. When I got home the whole alley way was lit up from Betty Biddy's flood lights. When I got to my yard I took the money out of the bag and started counting. I just tossed the bag away.
19. I went into the house and finished counting my money, \$917.00 (counting a Canadian \$5.00 bill from Jacques), then I went to bed.
20. Gigi and I went to the music store and bought the guitar the next morning. I went to practice at the music hall. Then that cop, Schield, comes to my house and asks me all these questions. I told him just what happened but he didn't believe me. He came back later with an arrest warrant. It seems even when I win, I lose.

## **RIGHTS OF THE ACCUSED**

### **MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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## **ATTORNEY PREPARATION SHEET**

- A.** As an attorney in the courtroom simulation game it is your job to represent either:
- 1.)** the people of the state of Minnesota if you are a prosecuting attorney. This means that you present witnesses who by their testimony will convince the jury, beyond any doubt, that the defendant is guilty of the charges that you have brought against him.
- OR**
- 2.)** the defendant in this criminal case with the purpose of establishing innocence by challenging the prosecution's charges and witnesses and by presenting witnesses who establish innocence or create doubt as to the guilt of the defendant.
- B.** In order to do the best job possible for your side in the case you should:
- 1.)** Read and become completely familiar with the situation stated in the case book.
  - 2.)** Read carefully all the testimony the witnesses on your side can give to help your cause.
  - 3.)** Write questions which will bring that testimony out when a witness is on the stand. (See Direct Examination Hints.)
  - 4.)** Work with each witness-asking them questions and receiving answers until both of you are satisfied that all testimony is being presented in an accurate and believable way.
  - 5.)** Become familiar with the witness testimony of your opponent's case. Know what your opponent in this case plans to do and think of ways to challenge it. You should read through all of the opposition testimony and begin to write up questions for each of their witnesses. These questions should create doubt or unbelievability in the testimony. You should also look for a motive that each witness might have for lying on the stand or for bending the truth. Examples - jilted lover, owes money, doesn't like the person, had a fight with the defendant, etc. (See Cross Examination Hints.)
  - 6.)** Review the rules of evidence completely and be ready to make objections whenever your opponent violates one of the rules.
  - 7.)** Prepare and practice giving an opening statement which informs the judge and jury what your side will prove in the case. (See Opening Statement Hints.)

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**ATTORNEY PREPARATION cont.**

- 8.) When the case begins you will follow the step by step procedure below:
- a) Prosecution makes opening statement.
  - b) Defense makes opening statement.
  - c) Prosecution presents witnesses in logical order for direct examination. The defense attorney then cross examines each witness.
  - d) Defense then presents its case by calling witnesses in logical order for direct examination. The prosecution attorney will cross examine each of the defense witnesses.
  - e) When all the witnesses have testified and have been cross examined, the prosecution attorney will make his closing statement and then the defense attorney will make his closing statement. (See Closing Statement Hints.)

**WITNESS PREPARATION SHEET**

1. You have been assigned a role in a courtroom simulation of a criminal trial. You will be on the defense (trying to show the innocence of the accused) or you will be on the prosecution (trying to prove the guilt of the accused).
2. In order to prepare your role, you have been given a **CASEBOOK** which contains the following information:
  - a) The prosecution case summary and the defense case summary - which tells you the nature of the alleged crime and the charges that are being brought against the accused.
  - b) Testimony - the statements that will be made by the other witnesses on your side in the case. You must become completely familiar with the testimony of all friendly witnesses because their testimony directly relates to your own.
  - c) Your testimony - this is a list of statements which contains all the information you know which is important to your side of the case.
  - d) Opposition testimony - these are statements that will be made by witnesses that are hostile (against your case). Read their statements over carefully so that you are completely familiar with all aspects of the case.
3. Once you are completely familiar with the case, do the following:
  - a) Build a realistic story which includes all the facts you know regarding the case.
  - b) Practice telling your story until you can do so without the help of notes or prompting from others.
  - c) Check your story with the testimony of other witnesses so that you don't contradict something that they will say as part of their testimony.
  - d) Write down questions which will bring out every fact that you know. Your attorney will ask you these questions on the witness stand so practice them before the trial starts.
  - e) If time permits, each witness should try to tell his/her story to all of the attorneys. Check over the important points, remove all the contradictions. Be sure you don't say anything to goof up other witnesses on your team.

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL** \_\_\_\_\_

**WITNESS PREPARATION SHEET cont.**

4. **Evaluation:** As a witness in the court simulation you will be graded on the following:
1. The questions you have written for your attorney.
  2. The story you tell on the witness stand during direct examination for both content and realism.
  3. How well your story holds up during cross examination.



## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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## JUDGE'S INSTRUCTION SHEET

1. The judge presides over the court trial simulation. The judge rules on attorney objections, acts as a referee to insure both sides in the case are treated fairly and that the defendant receives a fair trial. The judge provides both sides in the case the opportunity to state their case in a fair and legal way in accordance with the law and the rules of evidence. The judge's decisions are final.
2. The judge sees that the trial moves along. He or she does not accept unnecessary delays by attorneys or witnesses who are unprepared. In such circumstances the judge will warn those involved that case preparation takes place before and not during a court session. If the problem continues, the judge will warn those involved that they can be charged with contempt of court and removed from the court room for the day.
3. The judge disciplines those who in any way disrupt the trial. The judge gives one warning then charges the offender with contempt and has him removed. Common disruptions include unnecessary talking, continual arguing between attorneys and coaching witnesses on the witness stand.

## TRIAL PROCEDURE

1. Open the trial each day by rapping the gavel and saying, *"This court is now in session. It will hear the State of Minnesota vs. \_\_\_\_\_ (name of the defendant)"*
2. On the opening day of the trial make the following statement to the jury:

*"You have been chosen as a fair and impartial panel to hear the testimony and to make judgement regarding guilt or innocence. You are to remember that under our court system the defendant is innocent until proven guilty beyond reasonable doubt. in order to make a fair judgement in this case, you must review those notes before making a final decision. Your decision must be based only on the facts as you see them, therefore you must set aside any personal feelings for or against anyone involved in this case. If you cannot hear an attorney or witness, inform me immediately and I will have those involved repeat the question or answer and remind them to speak up."*

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### JUDGES INSTRUCTION SHEET cont.

3. After making comments to the jury, call for opening statements by saying:  
*"The prosecution may now make its opening statement."*

After the prosecution has finished its opening statement say:  
*"The defense may now make its opening statement."*

4. Next the prosecution presents its case. Open by saying,  
*"The prosecution may call its first witness."*

From then on say, *"The prosecution may call its next witness."*

5. When a witness approaches the stand, say, *"Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, under penalty of perjury so help you God."* The witness should answer by saying, *"I do."* you then say, *"Take the stand."*

6. During both direct and cross examination of witnesses, your job as judge is to listen closely to the questions asked and answers given on the stand. Concentrate especially on possible violations of the rules of evidence. If an objection is made by an attorney, rule on the objection based on your knowledge of the rules of evidence and your good judgement. Once an objection has been made, you must rule on that objection before any other questions can be asked or answers given. Remember that only an attorney may make an objection and he must state the rule of evidence he feels has been violated when he does so any argument or discussion regarding an objection should take place quickly and quietly at your bench. Your decision is final.

7. After the prosecution has called its last witness and the witness has been cross examined by the defense, the defense presents its case. You say,  
*"The defense may call its first witness."*

8. The procedure for swearing in defense witnesses and ruling on objections remains the same as during the prosecution case.

9. When the last defense witness has stepped down from the witness stand, it is time for closing statements. You say,  
*"The prosecution may make its closing statement."*

Then say, *"The defense may make its closing statement."*

**RIGHTS OF THE ACCUSED**

**MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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**JUDGE'S INSTRUCTION SHEET cont.**

10. After the closing statements have been presented, give your final instructions to the jury by saying,

*"According to the law (Minnesota statute number 609.58 which carries a maximum penalty of 20 years in prison and/or a maximum fine of \$20,000) burglary is committed when a person unlawfully breaks into and enters a building without the consent of the owner with the intent to commit a crime therein. You have heard the evidence in this case and have notes regarding that evidence. It is time for you to weigh that evidence and make a fair and impartial decision regarding guilt or innocence. You are reminded once again that personal feelings for or against the defendant or any other members of this court should not in any way influence your decision. You are to discuss all aspects of the case and then vote on the defendant's innocence or guilt. When you have reached a unanimous verdict, return to this courtroom and inform the court of your verdict."*

Then say, *"court will recess until the jury returns with a verdict."*

11. After a verdict is announced - say, *"Court is adjourned."*

## **RIGHTS OF THE ACCUSED**

### **MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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#### **OPENING STATEMENTS**

- A. Opening statements provide a preview of evidence in a court case. In the opening statements, attorneys briefly outline what they will prove with their witnesses.
- B. Attorneys direct their opening statements to the judge and jury in the case.
- C. Opening statements should include:
  - (1) Comments regarding the background of the case and of the defendant. The prosecution attorney should show the defendant's motive for committing the crime. The defense attorney should show that the defendant had no motive for committing the crime.
  - (2) Comments regarding the evidence the prosecution will present to prove guilt, and the defense will present to show innocence.
  - (3) A positive presentation. (Say, "We will prove..." Don't say, "We hope to prove...")

#### **CLOSING STATEMENTS**

- A. The closing statements are final appeals by the attorneys to the jury. Closing statements are made after all the witnesses for both sides in the case have testified. The statements summarize all the evidence that each side has presented.
- B. Closing statements are directed by the attorneys to the judge and jury.
- C. Closing statements should include:
  - (1) A summary of the important points presented during the case.
  - (2) A mention of the mistakes and contradictions in the case of the opposition side.
  - (3) Comments regarding the defendant's motive or lack of motive for committing the crime.
  - (4) Comments by the prosecution showing that it has proved the defendant's guilt beyond a reasonable doubt.
  - (5) Comments by the defense that it has shown lack of motive and the impossibility of the defendant having committed the crime.

## RIGHTS OF THE ACCUSED

### MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL

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#### DIRECT EXAMINATION (Tips for attorneys and witnesses)

A. Prepare your witnesses before the trial begins.

1. Read over the testimony for each witness and discuss the information with the witness to make sure he understands the importance of his testimony to your case.
2. Help the witness develop a story around the testimony statements in his role. Make sure the story does not contradict the facts in the case or the stories of other witnesses for your side.
3. Develop questions to be asked of the witness designed to bring out the story on the witness stand.
4. Questions should be arranged in a logical order and should bring out the witness' story in a step by step manner that is easy to understand.
5. Make sure the questions for the witness do not violate the rules of evidence for direct examination.
6. Help the witness prepare for cross examination by looking for weaknesses in the testimony and developing comments and answers to explain away those weaknesses.

B. Direct examination should:

1. Begin by calling the witness to the stand. Say, "*Your honor, the (defense/prosecution) would like to call \_\_\_\_\_ to the stand.*" (name of witness)
2. After the witness has been sworn in say, "*State your name and your connection with the case.*"
3. Ask the questions you have prepared for direct examination. Go slowly. Emphasize important points by asking follow-up questions. Clarify anything that may be attacked by the other side in cross examination.
4. The goal of each witness is to strengthen your side in the case and to weaken the opposition's case. Make sure that any evidence your witness has which contradicts the opposition's case is brought out during direct examination.



## **RIGHTS OF THE ACCUSED**

### **MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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#### **CROSS EXAMINATION** **(Tips for attorneys and witnesses)**

- A.** Cross examination allows an attorney to attack the testimony of an opposition witness. The attorney attempts to cast doubt on the testimony given in direct examination by showing contradictions, inaccuracies, unbelievable statements or outright lies. The goal of cross examination is to cause the jury to doubt part or all of the witnesses testimony.
- B.** In preparing cross examination questions:
1. Read over the testimony for each of the opposition's witnesses in the case book. Take note of weaknesses, contradictions or unbelievable testimony and prepare questions to attack them.
  2. Listen carefully to the direct examination of each of the opposition's witnesses. Make note of contradictions with testimony in the case book and with previous opposition witnesses. Ask cross examination questions designed to show those contradictions to the judge and jury.
- C.** Impeaching the witness (showing that he is lying under oath) is seldom done except by T.V. lawyers. However, this is a simulated trial and each witness has made up his testimony. Well designed cross examination, therefore, can usually cast some doubt on the testimony of even the strongest witness.
- D.** The opposition witnesses will be leaning toward their own side in the case and may, therefore, exaggerate parts of their testimony to help their side. Try to point out those exaggerations to the jury.
- E.** You must be prepared to make a point -- then try to get the witness to agree to that point. Once the point has been made, drop that line of questioning and move on to something else.
1. Start with simple questions or statements.
  2. Get the witness to agree to them.
  3. Work up to your main point gradually, get the witness to agree, then move on to the next point you wish to make.
  4. Cross examination is a trap. Lead the witness into the trap with simple innocent sounding questions, then spring the trap with the real point you wish to make.

## **RIGHTS OF THE ACCUSED**

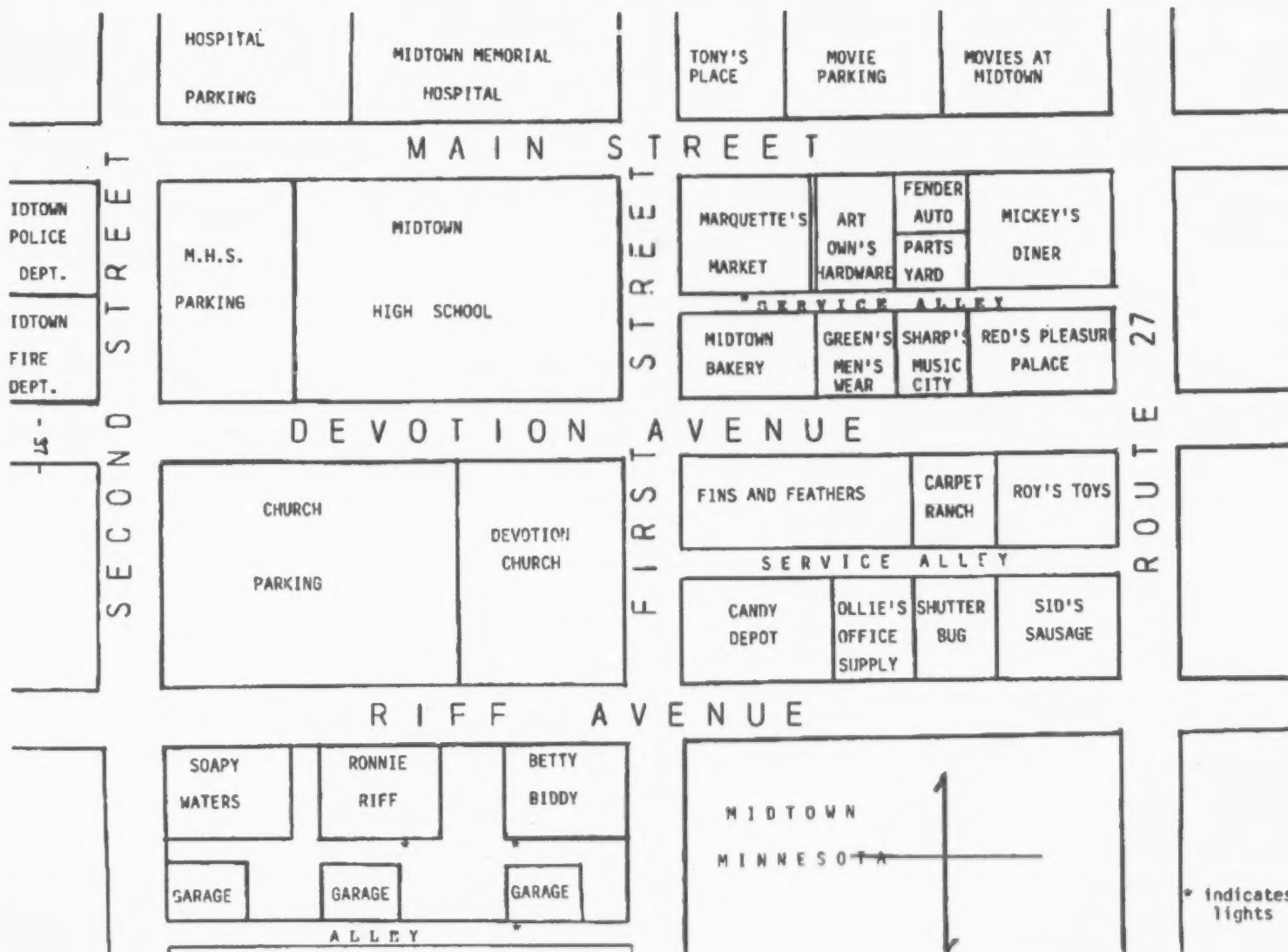
### **MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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#### **CROSS EXAMINATION cont.**

- F.** Cross examination is carried out by a team of attorneys.
- 1.** The team should divide up the work to be done.
  - 2.** Each attorney should develop cross examination questions for each witness.
  - 3.** While one attorney is questioning the witness, the others can think of additional ways to attack the testimony.
  - 4.** Each attorney should take notes during the direct examination of the witness and base his attack on those notes.
  - 5.** Don't be afraid to occasionally ask the judge for a short recess to work out cross examination strategy if you are stumped or if a new and unexpected situation develops.
  - 6.** If you have a hunch that a witness knows something he isn't talking about, ask questions designed to bring this out.
  - 7.** Take notes on all errors and contradictions in the testimony of the opposition and remind the jury of these during your closing statements.
- G.** You may ask leading questions during cross examination.

RIGHTS OF THE ACCUSED  
MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL



## RULES OF EVIDENCE

A criminal trial is a contest between the defense and the prosecution. Like any contest, certain rules have been developed to try to insure that both sides will compete fairly. Below are some of the rules that have been developed regarding the types of questions attorneys may ask and the types of answers witnesses may give.

If an attorney for one side in a criminal trial feels that an attorney or witness for the other side has violated one of the rules, he objects to the judge.

(Example: *"I object, your honor, that's a leading question."*)

If the judge agrees with the objection, the judge will say *"Objection sustained"* or *"Objection upheld."*

(In the above example the question would then have to be re-worded or withdrawn.)

If the judge disagrees with the objection, the judge would say *"Objection overruled,"* and the questioning would continue.

Evidence which follows the rules is called *admissible*. Evidence which violates the rules is *inadmissible*. Below are some of the rules which must be followed to guarantee that the evidence is admissible:

### 1. Hearsay

A witness must not give "second hand" information on the witness stand.

(Example: *"Vibes Blare told me that he saw the defendant with a gun that night."*)

This evidence, that the defendant had a gun, must come from Vibes Blare not from this witness who is passing on second hand information.

### 2. Opinion

A witness must limit his comments to facts and not give opinions on the witness stand, nor may an attorney ask for such an opinion. The opposing attorney may object when the attorney asks a question calling for an opinion or when the witness answers with an opinion.

(Example: *"I saw the defendant at 3:30 P.M. that day. He looked scared to death."*)

In the above example, the first sentence is a statement of fact and therefore is admissible. The second sentence is an opinion of the witness and is inadmissible. An exception to this rule is when the witness is an expert and is giving an opinion in his/her field.

## **RIGHTS OF THE ACCUSED**

### **MINNESOTA V. RONALD RIFF: A CRIMINAL MOCK TRIAL**

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#### **RULES OF EVIDENCE cont.**

##### **3. Irrelevant Testimony**

A witness who gives testimony which has nothing to do with the case is wasting the court's time and violating a rule of evidence.

Also a lawyer must have reasons for asking direct and cross examination questions or be prepared to get an objection of *"Irrelevant Questions"* from the opposition attorney.

##### **4. Character of the Accused**

Trying to prove the defendant is innocent by showing that he has had a good reputation in the past or trying to prove guilt by showing that the defendant has had a bad reputation in the past is usually not allowed. The court feels that a past pattern of behavior is not a good predictor of behavior on a particular occasion.

##### **5. Asked and Answered**

While an attorney may ask review or clarification questions, the court does not allow an attorney to ask the same questions over and over for the purpose of buying time or for the purpose of confusing a witness.

##### **6. Conclusion of Law (Assuming to be true what is still to be proved)**

An attorney would be violating this rule of evidence if he/she referred to the defendant in a burglary case as "the burglar" or said "on the night of the burglary." It is the prosecution's job to prove there was a burglary and that the defendant committed it. Attorneys avoid violating this rule by saying: *On the night of the alleged burglary.*

##### **7. Leading Questions**

An attorney during direct examination (when the attorney is questioning a witness he/she has called to the witness stand) may not coach the witness by asking leading questions.

(Example: *"Officer Schield, isn't it true that on the night of the alleged burglary, you by the market at 11:58 P.M.?"*)

##### **8. Making A Statement**

A lawyer during direct and cross examination should be asking questions of the witness. Statements or comments by the lawyers are not appropriate bet during opening or closing arguments.

##### **9. Harassing the Witness**

During cross examination when an attorney intentionally confuses the witness by asking questions rapidly without allowing time to think or answer the questions.



## **RIGHTS OF THE ACCUSED**

### **THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION** \_\_\_\_\_

## **The Ongoing Debate: Crime Control v. Due Process Protection**

**by Mike Carls**

Students will examine the Exclusionary Rule and other alternatives for enforcing the protections found in the Bill of Rights. Activities involved will include teacher led discussion, small group discussions, students authorship of position papers, and classroom debate.

#### **Students will:**

1. Learn that society faces a very difficult task when we pursue effective crime control and public safety, while at the same time protecting the constitutional rights of individuals.
2. Learn what alternatives exist for enforcing the criminal procedure protections set forth in the U.S. Constitution.
3. Learn the historical development of the Exclusionary Rule and a few arguments both for its use and in opposition to its use.

**Materials needed:** Copies of: **Student Handout 1: VIOLENT CRIME**  
**Student Handout 2: PROTECTING INDIVIDUAL RIGHTS**

**Time needed:** 4-5 days

**Grade level:** 11th - 12th grades

#### **Procedure:**

1. Teachers will introduce the central issues raised in this lesson by presenting the students with the following information.

Most Americans recognize and value both of the following conditions:

A. To be safe and secure in person and home is a fundamental desire of nearly everyone. In fact, the concept of common welfare is, to many people synonymous with effective law and order in American society today. Contemporary society has become increasingly alarmed about the crime explosion in America which has affected every community in the nation to some degree.

## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION \_\_\_\_\_

#### Procedure cont.

B. An equally important and valued goal in our society is preserving and protecting the individual liberties that are found in the first eight amendments to the United States Constitution. Some of these highly valued rights are: the right to a speedy and public trial by an impartial jury; the protection against unreasonable searches and seizures; the freedoms from being tried twice for the same crime; and the protection against self-incrimination. There are additional, equally important rights, found in the Bill of Rights.

The central question raised by this lesson is: *Is it possible to effectively control crime in our society while at the same time protect the individual rights of the people from infringement by the government?*

2. Tell students that they will be developing evidence to support the argument that crime is a serious problem.
3. Individually, have students examine a daily newspaper over a three-day period and compile a list of all the crimes reported in the newspaper during that time period.
4. In groups of four or five students, have them complete a single list which includes the examples found by the individual group members.
5. The teacher should distribute **Student Handout 1: VIOLENT CRIME** which provides additional examples of the crime problem.
6. Teacher will lead classroom discussion considering the following:
  - A. Identify and elaborate on several reasons why there is so much crime in our society.
  - B. What are some of the alternatives that could be utilized to reduce the amount of crime in our society?
  - C. Identify and explain what potential problems may arise for each alternative method of reducing crime.
7. Have the students draw conclusions from this activity including, among others:
  - A. crime is indeed a serious problem,
  - B. the causes of crime are numerous and highly complex
  - C. there are no easy, quick, safe, fair, and guaranteed methods of reducing the level of crime.

## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION \_\_\_\_\_

#### Procedure cont.

8. Tell students that they will now develop arguments to support the claim that we value our individual liberties and realize that government may, at times, threaten those liberties.
9. Have students read **Student Handout 2: PROTECTING INDIVIDUAL RIGHTS** and, in groups of three, complete the following:
  - A. summarize and explain the point being made by James Madison in his speech of June 8, 1789.
  - B. list the apparent violations of the Bill of Rights that were experienced by the three individuals mentioned in the handout.
10. Teachers will lead a classroom discussion, considering the following:
  - A. What was the main point of James Madison's comments?
  - B. In the view of today's legal system, were Madison's concerns valid?
  - C. What alternatives should be pursued to insure that government does not infringe on the individual rights of the people?
  - D. Evaluate the appropriateness of each alternative.
  - E. What constitutional errors do you believe were allowed by the state courts in Missouri, Georgia, and Florida in the cases of Thompson, House and Smith?
  - F. What is your reaction to the facts in the 1936 Supreme Court case *Brown v. Mississippi*? Why?
11. Have students draw conclusions from this activity, including, but not limited to, the following:
  - A. The framers of the Bill of Rights realized that government infringement on individual liberties was a serious potential problem.
  - B. There are numerous examples in U.S. history in which the rights of individuals have been violated during the criminal procedure process.
12. Briefly explain the general philosophy of the *crime control* model of criminal law and the philosophy of the *due process* model of criminal law. Be sure to explain that these models overlap. In explaining the crime control model, include the following points.
  - A. The most important concern is that society must be made safer and criminals must go to jail.
  - B. If an innocent person goes to jail, it is the price we pay for an orderly, safe society.
  - C. Most of the people charged with crimes are probably guilty and should go to jail.

## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION \_\_\_\_\_

#### Procedure cont.

D. The courts have been overly concerned with protecting Constitutional rights, and the result has been that guilty persons have gone free.

13. Explain the due process model, including the following points:

- A. The protection of individual liberties is extremely important because when one person's rights are violated all of society's rights are at stake.
- B. It is better that a guilty person occasionally remains free from going to jail than for individual rights to be eroded.
- C. The guarantees of the Bill of Rights must be strictly followed from the point of initial contact with law enforcement authorities through the point of imprisonment if that is the outcome.
- D. Society must be willing to sacrifice efficiency in order to protect rights.

14. Instruct students about the Exclusionary Rule (See **TEACHER BACKGROUND** information) and tell them that they will be using the Exclusionary Rule as the basis for the evaluation of the *crime control model* and the *due process model*.

15. In groups of three or four, have the students discuss the following questions:

- A. What are the strengths and weakness of the departmental discipline, civil law suit, and civilian review board means of limiting the police practice of illegal searches and seizures.
- B. List the positive aspects of the Exclusionary Rule.
- C. List the negative aspects of the Exclusionary Rule.

16. Have the students write a one or two page position paper on the Exclusionary Rule by responding to the following statement: *"The Exclusionary Rule is the best means of enforcement of the Fourth Amendment protection against illegal search and seizure."*

17. On the basis of the positions taken in the position papers, have the class debate the issue by dividing it into two groups. Each side should fully explore the appropriateness of the Exclusionary Rule.

18. Optional activity or final evaluation of the lesson: Students should write a two page paper in which they identify the advantages of both the *crime control model* and the *due process model*. The paper should include the student's selection of their preferred model, stating the reasons for their positions.



## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION

#### TEACHER BACKGROUND: Exclusionary Rule

The Fourth Amendment to the United States Constitution states that *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated...."* If the police violate a person's rights under the Fourth Amendment, there are various means that could be used to deal with the situation.

Some of the alternatives utilized in different countries to deal with the illegal search/seizure problem are as follows:

A. The law enforcement officer who made the constitutional error could be disciplined (demoted, fired, fined) by the police administration, but the evidence could be admitted during a trial.

B. Individuals who believed they were victims of illegal searches/seizures could sue the police officers involved in a civil suit.

C. A civilian review board could hold hearings to investigate the supposedly illegal search/seizure action and recommend a penalty if they conclude that an illegal action did in fact take place.

D. The illegally seized evidence could be made inadmissible in a court of law (Exclusionary Rule).

In 1914 the U.S. Supreme Court ruled unanimously in *Weeks v. United States* that in the federal courts evidence secured illegally could not be used in prosecution efforts.

In 1949 the Supreme Court allowed the use of illegally seized evidence by the prosecutor in a state court criminal trial in the case of *Wolf v. Colorado*. Justice Frankfurter, writing for the majority, stated, *"... that in a prosecution in a state court for a state offense the 14th Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure."*

In 1961 the Supreme Court reversed the *Wolf* decision and ruled by a 5-4 vote in *Mapp v. Ohio* that illegally obtained evidence is not admissible in a state court. In effect the Supreme Court applied its 1914 *Weeks* decision creating the Exclusionary Rule to the states. The United States became the only country in the world to have such a strict rule regarding evidence. The facts involved in the *Mapp* case are included below as they appeared in Justice Clark's majority opinion.

*"On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person (was) hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant. \* \* \**



## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION

#### TEACHER BACKGROUND: Exclusionary Rule cont.

*"The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. (When the officers broke into the hall, Miss Mapp) demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which she was handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. \* \* \* Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. \* \* \* The search spread to the rest of the second floor \* \* \* The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.*

*"At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best (as the Ohio Supreme Court, which affirmed the conviction, expressed it), "there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home ...."*

The Exclusionary Rule is not found in the U.S. Constitution. It was created by the Supreme Court in order to prevent police officers from breaking the law. The Supreme Court eventually broadened its application to cover the rights included in the Fifth and Sixth Amendments.

People critical of the Exclusionary Rule claimed that the Supreme Court had made it too easy for criminals to escape being sent to prison. Some criminals who had quite obviously committed crimes were released by appeals courts because the police had made mistakes while conducting searches, seizing evidence, or conducting the criminal investigative procedure.

As different individuals were appointed to the U.S. Supreme Court in the 1970's and 1980's, the use of the exclusionary rule has been narrowed. Perhaps in reaction to increasing numbers of crimes involving violence and /or illegal drug use and trafficking, the Supreme Court has created the *good faith exception*. In *U.S. v. Leon* (1984) Justice Byron White wrote the 6-3 majority opinion. He stated that if the police believe they have a valid search warrant when they conduct a search only to find out after the search that the warrant was flawed, they acted in *good faith* and the search was legal. Justice White stated in *Leon* that

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**THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION** \_\_\_\_\_

**TEACHER BACKGROUND: Exclusionary Rule cont.**

the Exclusionary Rule was "*designed to deter police misconduct rather than punish the errors of judges.*" Justice William Brennan strongly disagreed with Justice White because he feared the "gradual but determined strangulation of the exclusionary rule."

## **RIGHTS OF THE ACCUSED**

### **THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION** \_\_\_\_\_

#### **Student Handout 1 : VIOLENT CRIME**

The following four situations were recently cited in a Minneapolis Star Tribune Editorial (July 21, 1991). The specific problems involving repeat sex offenders are clearly illustrated, by these examples.

1. Thomas Schwartz was released from a Nebraska prison on March 9, 1988 where he had served time for robbery and sexual assault. He was arrested two weeks later in Eagan, Minnesota for following a woman home. He went on to sexually assault and kill a Minneapolis woman on May 27, 1988.
2. David Thomas committed several rapes in Minneapolis in 1980. He was released from jail on May 17, 1988. During the three weeks following his release he sexually assaulted eight women and murdered the eighth victim on June 12, 1988.
3. Richard Moorman refused psychological counseling after pleading guilty to raping a seventeen-year-old woman in Minnesota in 1987. He was released to a halfway house in December of 1989 but did not show up. On October 16, 1990 he was arrested for attempted rape of his sister's roommate. He was later convicted of the September 19, 1990 rape and murder of a fourteen-year-old girl in Brooklyn Park, Minnesota.
4. Scott Stewart served 40 months in prison for a 1984 rape of a St. Paul woman. One month after his release, he kidnapped and repeatedly raped another St. Paul woman. He was sentenced to five years in prison and released to a half-way house on July 4, 1991. He failed to show up and is now charged with the July 8, 1991 abduction and murder of a St. Cloud, Minnesota woman.

The examples in this handout focus on sex-related violent crimes that resulted in death. Other violent crimes involving robbery, assault, kidnapping and murder are also increasing in frequency. Our society is struggling to find a means to deal with the crime problem. Should we deal with the problem by making it easier for the police to do their job by exempting them from such requirements as showing probable cause, obtaining search warrants, and advising people of their constitutional rights?

## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION

#### Student Handout 2: PROTECTING INDIVIDUAL RIGHTS

James Madison proposed that a Bill of Rights be added to the United States Constitution to a reluctant House of Representatives in a speech he made on the floor of the house on June 8, 1789.

In proposing the Bill of Rights, James Madison stated that his intent was...

*"to limit and qualify the powers of government, by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode."*

Madison went on to warn of the dangers of the necessary and proper clause in Article I when he stated:

*"It is true the powers of the general government are circumscribed; they are directed to particular objects; but even if government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent..."*

Madison also pointed out the fact that he believed state governments to be a greater threat to individual liberties than the national government:

*"the words, 'No state shall pass any bill of attainder, ex post facto law, etc.' were wise and proper restrictions in the constitution. I think there is more danger of those powers being abused by the state governments than by the government of the United States . . . I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no state shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every government should be disarmed of powers which trench upon those particular rights."*

The following examples involve the experiences of three individuals originally found guilty and sentenced to death in Missouri, Georgia, and Florida.

1. Douglas Thompson - Missouri courts conducted the original trial of Thompson with a jury that the sheriff had loaded with his friends.
2. Jack House - The lawyers for House prepared no defense for him in this Georgia case. They did not develop a strategy, did not seek witnesses, and failed to discover useful evidence that existed in police files because as one of the defense lawyers stated, "Both of us were too busy." House's case was summarized for the jury with a verse from the Bible.



## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION \_\_\_\_\_

#### Student Handout 2: PROTECTING INDIVIDUAL RIGHTS cont.

3. Dennis Smith - during the initial police interview of the only witness who placed Smith at the scene of the crime the witness failed to mention Smith at all. The jury was never informed of the absence of Smith's name during this important first interview that was crucial to his conviction.

4. See *Brown v. Mississippi* (1936) as a gross example of a violation of individual liberties. The following facts of the 1936 *Brown* case were set forth by Justice Hughes in his majority opinion in 1936.

*"The question in this case is whether convictions, which rest solely upon confessions shown to have been extorted by officers of the state by brutality and violence, are consistent with the due process of law required by the Fourteenth Amendment of the Constitution of the United States.*

*Petitioners were indicted for the murder of one Raymond Stewart, whose death occurred on March 30, 1934. They were indicted on April 4, 1934, and were then arraigned and pleaded not guilty. Counsel were appointed by the court to defend them. Trial was begun the next morning and was concluded on the following day, when they were found guilty and sentenced to death.*

*Aside from the confessions, there was no evidence sufficient to warrant the submission of the case to the jury. After a preliminary inquiry, testimony as to the confessions was received over the objection of defendants' counsel. Defendants then testified that the confessions were false and had been procured by physical torture."*

Justice Hughes continued to describe the facts of the case as follows:

*"The crime with which these defendants, all ignorant negroes, are charged was discovered about 1 o'clock p. m. on Friday, March 30, 1934. On that night one Dial, a deputy sheriff, accompanied by others, came to the home of Ellington, one of the three defendants, and requested him to accompany them to the house of the deceased, and there a number of white men were gathered, who began to accuse the defendant of the crime. Upon his denial they seized him, and with the participation of the deputy they hanged him by a rope to the limb of a tree, and, having let him down, they hung him again, and when he was let down the second time, and he still protested his innocence, he was tied to a tree and whipped, and still declining to accede to the demands that he confess, he was finally released, and he returned with some difficulty to his home, suffering intense pain and agony. The record of the testimony shows that the signs of the rope on his neck were plainly visible during the so-called trial.*



## RIGHTS OF THE ACCUSED

### THE ONGOING DEBATE: CRIME CONTROL V. DUE PROCESS PROTECTION \_\_\_\_\_

#### Student Handout 2: PROTECTING INDIVIDUAL RIGHTS cont.

*A day or two thereafter the said deputy, accompanied by another, returned to the home of the said defendant and arrested him and departed with the prisoner towards the jail in an adjoining county, but went by a route which led into the state of Alabama; and while on the way, in that state, the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail.*

*"The other two defendants, Ed Brown and Henry Shields, were also arrested and taken to the same jail. On Sunday night, April 1, 1934, the same deputy, accompanied by a number of white men, one of whom was also an officer, and by the jailer, came to the jail, and the two last named defendants were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confess, but confessed in every matter of detail as demanded by those present; and in this manner the defendants confessed the crime, and, as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers. When the confessions had been obtained in the exact form and contents as desired by the mob, they left with the parting admonition and warning that, if the defendants changed their story at any time in any respect from that last stated, the perpetrators of the outrage would administer the same or equally effective treatment.*

*"Further details of the brutal treatment to which these helpless prisoners were subjected need not be pursued. It is sufficient to say that in pertinent respects the transcript reads more like pages torn from some medieval account than a record made within the confines of a modern civilization which aspires to an enlightened constitutional government."*

**Privacy and the Fourth Amendment**  
**by Christine Pistotnik**

In this lesson you will be examining the right of privacy and acting as judges to weigh the rights of the individual against the needs of the community in light of changing technology.

**Students will:**

1. Understand the delicate balance between protecting individual liberty and maintaining an orderly society.
2. Speculate about how the courts of the future might deal with new ideas of privacy.

**Materials needed:** Copies of: **Student Handout: PRIVACY THEN, NOW AND YET TO COME**  
**Student Handout: PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE**  
**Student Handout: TODAY'S TECHNOLOGY AND PRIVACY**  
**Student Handout: THE COURT 2100**

**Time to complete:** 3 class periods

**Grade level:** 8th-12th grades

**Procedure:**

**Day 1**

**1. Introductory Discussion:** Ask a student if you could look in her purse or ask another student if you could see the contents of his pocket. Is this a search? Discuss student feelings about this. Does a teacher have the right to do this?

Suggest that it is rumored that an unidentified student is concealing a dangerous weapon now. Is the search justified? Does this alter student opinion? Is the teacher justified in searching a student's property in order to protect the entire class from impending danger?

Imagine, for a minute that the teacher possesses a bionic eye transplant and can see into student purses and pockets. Does using this special transplant change the situation? Perhaps no one will even suspect that the teacher can see into student purses or pockets. Is this a search on the part of the teacher? Is it justified?

## RIGHTS OF THE ACCUSED

### PRIVACY AND THE FOURTH AMENDMENT

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#### Procedure cont.

Suggest that this discussion might, on the surface, seem far fetched, but in reality there are many aspects of technology that are changing so fast as to make this procedure a possibility in the future. Consider X-ray equipment used for airport security. There is good reason to think about how we might perceive our right of privacy in the future.

2. Distribute and read **Student Handout: PRIVACY THEN, NOW AND YET TO COME**. Read. Discuss
3. Divide the class into groups of 6.
4. Distribute and assign **Student Handout: PRIVACY AND TECHNOLOGY, YOU BE THE JUDGE**. Clarify directions.
5. When groups have worked through the assignment as directed in their groups, discuss each side of the three examples in class with students giving the arguments from the group discussions. These could be listed on the board.
6. As a result of the group and class discussions, students should decide which side presented the most compelling arguments and complete the judge's opinion section of the activity sheet. This part of the lesson can be completed as homework if class time does not permit.

#### Day 2

1. Discuss the judge's (student's) decisions assigned in the previous lesson. Be sure that students explain the rationale used to arrive at these decisions.
2. Discuss the actual decisions of the Court in these cases. (See **ANSWER KEY**)
3. Discuss with students that some elements of today's technology give us reasons to think about our concept of privacy. In some ways our privacy seems to be diminished and yet in some ways, life in society seems safer. Explain that this topic will be explored in this lesson.
4. Distribute **Student Handout: TODAY'S TECHNOLOGY AND PRIVACY**
5. Work in groups of 6.
6. Discuss each issue presented and complete the chart as directed.

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**Procedure cont.**

7. When the groups have completed the discussion and the chart, discuss the findings together as a class. A tally could be made of all the group responses.

#### **Day 3**

1. Return to the groups of 6. Discuss and complete the activity **Student Handout: THE COURT 2100**. Possible terms to use for motivation include:

Robots programmed by someone else for use by disabled, elderly, etc.

Sensors that monitor activity in home or office

Monitor systems to measure work or conversations.

Medications which control behavior procedures

Memory transplants

Subliminal messages

Transplants: brains, limbs

Is privacy the same today as it was in the 1800's?

2. Present group ideas to the class. Make composite list on board.

3. Recap: Will the 4th Amendment as we know it stand up to advancing technology and protect our right of privacy?

#### **Other options:**

1. Students could be assigned various types of research into present day technology or the predictions of futurists.

2. Portray the three cases included in a modified courtroom atmosphere, directing students to role play an argument before a judge. Each student would argue one side of the issue and the student assigned as judge would offer an opinion.

3. Follow up on the exercise by writing an essay based ideas set forth in the activity **THE COURT 2100**.

4. Debate items of interest in class. Divide the class into two groups and brainstorm as many arguments as possible for one side or the other.

5. The police, computer specialists or other community people could be brought in to discuss new types of technology that relate to privacy issues. Ask students for parent references. Instruct each to address the issue of privacy.



## RIGHTS OF THE ACCUSED PRIVACY AND THE FOURTH AMENDMENT

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### Student Handout: PRIVACY THEN, NOW AND YET TO COME

Have you ever heard two children squabbling over a toy that each felt was "mine?" Did you ever argue with your parents over issues related to "your room?" Did you every have a question about who can search your pockets or purse? These are all issues of personal privacy. Issues of privacy and private ownership are deeply rooted in the ways in which we live our lives.

Issues of privacy have roots in history. During the Colonial Period, England attempted to tell colonial Americans what products they could produce and with whom they could trade. Americans totally disregarded the directives and carried on business as they saw fit. They knew that what they were doing was against English law. Even prominent American businessmen became smugglers. The English government cracked down on this illegal activity and searched colonial property at will. The colonists were outraged at these searches. Later, when the Constitution was written and a Bill of Rights was being added, Americans wanted to be sure that the new government would not repeat the type of searches that the English government had carried out. Because of this, the Fourth Amendment was included. It states, *"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and siezures, shall not be violated."*

Today we continue to be concerned with our rights of privacy and freedom from unreasonable searches. It is obvious, however, that the society in which we live is very different from that of the framers of the Constitution. Technology has dramatically altered the way we live. Consider some of the changes that have taken place.

The introduction of the automobile has dramatically altered transportation, and it is almost impossible to imagine getting from one place to another without it. People travel from one state to another with relative ease compared with the slow, often difficult ways in which colonial Americans were forced to travel.

New types of communication, namely the television, have made learning of news an instantaneous event. No longer do Americans rely on letters delivered by a messenger on horseback for the news. The 1990 conflict between the U.N. and Iraq over annexation of Kuwait was an example of this technology. For the first time, Americans were able to witness the events of war "live" on their T.V.'s.

A third advancement that we see having tremendous effect is the invention, development and use of computers. Some individuals refer to this time as the "age of information." Computers enable us to deal with vast amounts of information and it is virtually impossible to compare this to any system even imagined by colonial Americans.

We can only imagine what we might see in the future. We know technology will continue to change. We know that inventions will allow us to do things in the future which today seem impossible. We know you will grow up to live in world very different from that of the founding fathers and different even from that of today.

Consider some of the ideas set forth by Isaac Asmiov's book, *Your World 2000*, in which the reader is presented with ideas of how technology might affect life in the future. In



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**Student Handout: PRIVACY THEN, NOW AND YET TO COME cont.**

the introduction, Asimov states *"The new technology could shorten the working week and give us more time to enjoy holograms, 3-D TV or computer games. With more leisure time we could well lead less stressful lives and enjoy better health. New drugs will give us better pain relief, with technology improving spare-part surgery as well as microsurgery. Lasers, video and satellites may be used in war as well as in peace to develop new missiles, aircraft and submarines and even to wage war from space."*

Asimov suggests that computers will find their way into all aspects of life. There will be vast networks of computers which will serve as experts and replace individuals in the work place.

Asimov suggests that the use of gasoline might be abandoned in favor of more energy efficient fuels. Electric cars or high speed trains might be substituted for the cars we use today.

Biotechnology will allow for more transplants and biological engineering. Computers will record many aspects of our health and life will be sustained for longer periods of time.

These few examples demonstrate clearly that technology continues to reshape the society in which we live.

We have for the last 200 years relied on the U.S. Constitution to provide the structure for American society. We know our lives today are vastly different from those of Jefferson and Franklin, and we know the lives of our great-grandchildren are going to be vastly different from ours. Consider this question: will the U.S. Constitution be able to continue to provide the means for achieving an orderly society as set forth in the Preamble without tramping down the rights of the individual as identified in the Bill of Rights? This was the fundamental problem facing the founding fathers, it is the problem we face today, and it will continue to be a dilemma for Americans who succeed us, regardless of the technological state in which each society lives.

**RIGHTS OF THE ACCUSED**  
**PRIVACY AND THE FOURTH AMENDMENT**

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**Student Handout: PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE**

The six goals of our government are clearly expressed in the Preamble to the Constitution which states *"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."*

This simply means that there needs to be cooperation between the national and state governments, laws must be fair and all citizens need to be treated equally, communities must be free from crime and disorder, there needs to be a way to protect citizens from foreign attacks, there must be concern for the quality of people's lives, and people should be free from unnecessary and unjust laws.

The Preamble, therefore, empowers the government to make laws to this end.

At the same time, the Bill of Rights sets forth certain areas of life into which the government must not intrude. The Bill of Rights makes it very clear that certain personal liberties must be protected. Amendment IV states *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,:"*

Sometimes the interests of the state and the liberties of the individual come into conflict with one another. At that point, the courts might be called upon to determine when personal liberties must be limited for the good of the state, or the powers of the state must be limited to protect the rights of the individual.

You are going to be the judge. You will be provided an opportunity to determine this point of conflict between the individual and the state, past, present and future!

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**Directions:** Work in groups of 5-6. Read and discuss the cases presented. Complete the activity as directed wherein you must list all of the rights of the individual which must be protected and all of the activities of the government which are necessary in order to achieve the orderly society described in the Preamble.

In the cases that were actually tried, your teacher will tell you the findings of the court.

## RIGHTS OF THE ACCUSED

### PRIVACY AND THE FOURTH AMENDMENT \_\_\_\_\_

#### Student Handout: PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE cont.

**Case 1:** Police officers believe a person who might be connected with a recent bombing is hiding out in M. Mapps house. They knock on the door and M. Mapp refuses to allow them in. The officers return 3 hours later with more officers and forcibly enter the house. In the basement of the house, the officers find obscene materials. M. Mapp is arrested and convicted of possessing obscene materials.

| Mapp's Liberties | Community interests |
|------------------|---------------------|
|                  |                     |

Break into 2 groups. One group will argue *in favor of protecting Mapp's liberties* and the other will argue *in favor of community interests*.

**Q.** Which side seems to have the most compelling argument?

**YOU BE THE JUDGE.** Explain how you would rule in this case. Be convincing. Use phrases from the appropriate part of the Constitution to support your ruling.

**Case 2:** Police can board long-distance buses, trains and commercial airplanes and ask passengers' permission to search their luggage.

| Passengers rights | Safety interests of society |
|-------------------|-----------------------------|
|                   |                             |

Break into 2 groups. One group will argue *in favor of protecting the liberties of the passengers* and the other will argue *in favor of protecting the safety interests of society*.

**Q.** Which side seems to have the most compelling argument?

**YOU BE THE JUDGE.** Explain how you would rule in this case. Be convincing. Use the appropriate parts of the Constitution to support your argument.

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Student Handout: **PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE** cont.

**Case 3:** Vast amounts of information are held in computers. While scanning for information regarding credit, a technician discovers that J. Brown has been concealing illegal business transactions which appear to involve large exchanges of cash for what might be "illegal" drugs. The police are called in, and J. Brown is convicted for his activities.

| Brown's liberties | Community safety interests |
|-------------------|----------------------------|
|                   |                            |

Break into two groups. One group should argue *in favor of Brown's liberties* and the other should argue *in favor of community interests*.

**Q.** Which side seems to have the most compelling arguments?

**YOU BE THE JUDGE.** Explain how you would rule in this case. Be convincing. Use appropriate parts of the Constitution to support your argument.

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**ANSWER KEY: Privacy and Technology: You be the Judge**

**Case 1.     *Mapp v. Ohio* (1961)**

Police officers received a tip that Dolly Mapp was hiding a fugitive in her house and that she was in possession of a number of betting slips used for illegal gambling. When the officers arrived at her home, she refused to let them in without a search warrant. The police officers left. Three hours later, they returned and forced their way into Ms. Mapp's home. The officers thoroughly searched the house. Although they did not find the fugitive or the gambling materials, they did find obscene materials which were later admitted as evidence in Mapp's trial for possession of obscene materials. Mapp was convicted. She appealed her conviction. The the U.S. Supreme Court ruled that her Fourth Amendment right to be secure from unreasonable searches and seizures had been violated by the action of the police. The exclusionary rule was applied, and her conviction was overturned. The exclusionary rule is a method of enforcing the protections provided by the Fourth Amendment by excluding evidence obtained in violation of the Fourth Amendment from a criminal trial.

**Case 2.     *Florida v. Bostick* (1991)**

Terrance Bostick was a passenger on a Greyhound bus traveling from Miami to Atlanta when police officers boarded the bus and ask for passengers' permission to search their bags. Mr. Bostick allowed the officers to search his bag in which they found cocaine. Mr. Bostick tried to have the evidence of the cocaine suppressed at his trial for possession of illegal drugs. The court denied his request, and Mr. Bostick was found guilty. On appeal to the U.S. Supreme Court, the Court found that Mr. Bostick had been free to refuse to let the officers search his bag and that by failing to do this he had given the officers permission for the search. The search was not a violation of the Fourth Amendment.

**Case 3.**

The Bill of Rights protects individuals from unreasonable actions by state and federal government officials. In this case, the implicating data was discovered by a computer technician, not a state or federal employee. The U.S. Supreme Court has held that the Fourth Amendment does not apply to private individuals. Therefore, the technician could turn over the information to the police, and they could use it in J. Brown's trial.



**RIGHTS OF THE ACCUSED****PRIVACY AND THE FOURTH AMENDMENT** \_\_\_\_\_**Student Handout: TODAY'S TECHNOLOGY AND PRIVACY**

Consider the following issues related to privacy and technology. Balance individual liberty against community interests. Decide the limits in each case.

| <b>Issues</b>                                                                                                           | <b>Right of Privacy<br/>must be preserved</b> | <b>Community Safety<br/>must be insured</b> | <b>Limits that must<br/>be imposed</b> |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------------|----------------------------------------|
| Police have in their patrol cars immediate access to individual police records.                                         |                                               |                                             |                                        |
| Life support systems allow people to be kept alive for longer periods of time.                                          |                                               |                                             |                                        |
| Electronic devices allow computers to accumulate and disperse vast amounts of information about individuals.            |                                               |                                             |                                        |
| Social security numbers are used as the basis for identification of all individuals by the government and for business. |                                               |                                             |                                        |
| Camcorders in squad cars allow police actions to be viewed by others.                                                   |                                               |                                             |                                        |
| Advancements in telecommunications allow others to hear or see what goes on inside the homes of individuals.            |                                               |                                             |                                        |
| Medical tests show substances which have been consumed by individuals                                                   |                                               |                                             |                                        |
| Tests show if individuals carry AIDS.                                                                                   |                                               |                                             |                                        |
| Genetic engineering might some day provide the means to determine the inherited traits of children.                     |                                               |                                             |                                        |

**RIGHTS OF THE ACCUSED**  
**PRIVACY AND THE FOURTH AMENDMENT**

**Student Handout: THE COURT 2100**



You are the modern Rip Van Winkle Supreme Court of the future who awakes in the year 2100. Visualize and list as many cases as you can imagine which might come before you in light of the changing technology we see today.

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**RIGHTS OF THE ACCUSED**  
**PRIVACY AND THE FOURTH AMENDMENT** \_\_\_\_\_

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## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_

#### **The Rights of the Accused in Search and Seizure** **by Chieu Dao and Seng Lo**

Search and seizure law is designed to protect the right to privacy. Like other Bill of Rights protections, the right to privacy is not absolute. Only "unreasonable" searches and seizures are prohibited. What makes a search unreasonable is the subject of a large and sometimes conflicting body of judicial opinion. Recent decisions of the U.S. Supreme Court seem to have given the police greater leeway to use evidence against defendants when the seized evidence was not on the defendant's person but was in some other place or in the possession of a third party. For example, the Court held that a person who did not own an auto in which he was riding could not object to the introduction at trial of a shotgun seized from the car even though the search may have been illegal.

#### **Students will:**

1. Explain the rationale behind the Fourth Amendment,
2. Identify the types of activity that are regulated by the Constitution's prohibition against unreasonable searches.
3. List common situations in which search warrants are not required.
4. Analyze situations in order to determine whether a search is lawful or unlawful.
5. Explain the rights a citizen has when the police make an unlawful search or seizure.

**Materials needed:** Copies of: 4th & 14th Amendments (See Appended Material)  
Student Handout: SEARCHES WITH A WARRANT  
Student Handout: SEARCHES WITHOUT A  
WARRANT  
Student Handout: MAPP V. OHIO  
Student Handout: THE CASE OF BILLY  
GREENWOOD  
Student Handout: COMPARING RIGHTS

**Time needed:** 2-3 class periods

**Grade level:** 9th - 12th grades

## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_

#### Procedure

1. Have students read the **Fourth and Fourteenth Amendment** and use **Student Handout: SEARCHES WITH A WARRANT** and **Student Handout: SEARCHES WITHOUT A WARRANT**. Briefly discuss the content of each, asking the students what each means to them.
2. Read **Student Handout: MAPP V. OHIO**. Ask students to review the case. Questions to ask:

|                             |                                             |
|-----------------------------|---------------------------------------------|
| A. What happened?           | F. Did the trial court allow the evidence?  |
| B. Did a search occur?      | G. What was the state's argument on appeal? |
| C. Was there a warrant?     | H. What did the U.S. Supreme Court say?     |
| D. What evidence was found? | I. Do you agree or disagree?                |
| E. Where was it located?    |                                             |
3. Tell students they are going to consider a more current search case. Have students read **Student Handout: THE CASE OF BILLY GREENWOOD**.
4. Discuss questions. (See **ANSWER KEY: The Case of Billy Greenwood**)
5. Invite an attorney or a judge to class to talk with students about different aspects of the accused in **Student Handout: SEARCHES WITH A WARRANT**. Answer questions they might have.
6. Have students do research on other country's law pertaining to the rights of the accused in searches and seizures by using library or interviewing people from that country.
7. Have students read **Student Handout: COMPARING RIGHTS**. Ask them to list the rights that Americans have that are not present today in Vietnam. Student answers will include protection from unreasonable searches, right to a speedy trial, right to bail, prohibition against cruel and unusual punishment.



## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE

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#### Student Handout: SEARCH WITH A WARRANT

##### SEARCH AND SEIZURE

Americans have always valued their privacy. They expect to be left alone, to be free from unwarranted snooping or spying, and to be secure in their own homes. This expectation of privacy is important and is protected by the U.S. Constitution. The Fourth Amendment sets out the right to be free from "*unreasonable searches and seizures*" and establishes conditions under which search warrants may be issued.

Balanced against the individual's right to privacy is the government's need to gather information. In the case of the police, this is the need to collect evidence against criminals and to protect society from crime.

The Fourth Amendment does not give citizens an absolute right to privacy, and it does not prohibit all searches - only those that are unreasonable. To determine what searches are prohibited, the courts look to the facts and circumstances of each case. As a general rule, the courts have held that searches and seizures are unreasonable unless authorized by a valid warrant.

The language of the Fourth Amendment is relatively simple, but search and seizure law is complex. Courts look at the law on a case by case basis, and there are many exceptions to the basic rules. If an individual on trial was the victim of an unreasonable search, any evidence found in the search cannot be used at the trial against the defendant. This principle, called the "exclusionary rule," does not mean that the defendant cannot be tried or convicted, but it does mean that evidence seized in an unlawful search cannot be used at the trial.

##### SEARCH WITH A WARRANT

A search warrant is a court order. It is obtained from a judge who is convinced that there is a real need to search a person or place. Before a judge issues a warrant, someone, usually a police officer, must appear in court and testify under oath concerning the facts that provide the probable cause to believe that a search is justified. This sworn statement of facts and circumstances is known as an affidavit. If a judge issues a search warrant, the warrant must specifically describe the person or place to be searched and the particular things to be seized.

Once issued, the search warrant must be executed within a limited period of time, such as 10 days. Also, in many states, a search warrant must be executed only in the daytime unless the warrant expressly states otherwise. Finally, a search warrant does not necessarily authorize a general search of everything in the specified place. For example, if the police have the warrant to search a house for stolen televisions or other large items, it would be unreasonable for them to look in desk drawers, envelopes, or other small places where a television could not possibly be hidden.

Excerpts taken from: Arbetman, O'Brien and McMahon, *Street Law, A Course in Practical Law*, Fourth Edition

## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_

#### **Student Handout: SEARCHES WITHOUT A WARRANT**

While the police are generally required to get a search warrant, the courts have recognized a number of situations in which searches may be legally conducted without a warrant.

***Search incident to a lawful arrest.*** This is the most common exception to the warrant requirement. It allows the police to search a lawfully arrested person and the area immediately around that person for hidden weapons or for evidence that might be destroyed.

***Stop and frisk.*** A police officer who reasonably thinks a person is behaving suspiciously and is likely to be armed may stop and frisk the suspect for weapons. This exception to the warrant requirement was created to protect the safety of officers and bystanders who might be injured by a person carrying a concealed weapon.

***Consent.*** When a person voluntarily agrees, the police may conduct a search without a warrant and without probable cause. Normally, a person may grant permission to search only his or her own belongings or property. In some situations, however, one person may legally allow the police to conduct a search of another person's property (e.g., parent/child).

***Plain view.*** If an object connected with a crime is in plain view and can be seen by an officer from a place where he or she has a right to be, it can be seized without a warrant. For example, if a police officer issuing a routine traffic ticket observes a gun on a seat of a car, the officer may seize the gun without a warrant.

***Hot pursuit.*** Police in hot pursuit of a suspect are not required to get a search warrant before entering a building that they have seen the suspect enter. It is also lawful to seize evidence found during a search conducted while in hot pursuit of a suspected felon.

***Vehicle searches.*** A police officer who has reasonable cause to believe that a vehicle contains contraband may conduct a search of the vehicle without a warrant. This does not mean that the police have a right to stop and search any vehicle on the streets. The right to stop and search must be based on probable cause.

***Emergency situations.*** In certain emergencies, the police are not required to get search warrants. These situations include searching a building after a telephoned bomb threat, entering a house after smelling smoke or hearing screams, and other situations in which the police don't have time to get a warrant.

## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_

#### Student Handout: SEARCHES WITHOUT A WARRANT cont.

***Border and airport searches.*** Customs agents are authorized to search without warrants and without probable cause. They may examine the baggage, vehicles, purse, wallet, or similar belongings of people entering the country. Body searches or searches conducted away from the border are allowed only in limited circumstances. Courts have also held it reasonable for airlines to search all carry-on luggage and to search all passengers by means of a metal detector.

Excerpts taken from: Arbetman, O'Brien and McMahon, *Street Law, A Course in Practical Law*, Fourth Edition.

## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE

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#### Student Handout: *MAPP V. OHIO*

Justice Clark delivered the opinion of the Court.

*"On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person was hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant.*

*"The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors of the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. When the officers broke into the hall, Miss Mapp demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. Appellant, in hand-cuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. The search spread to the rest of the second floor. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search."*

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best, as the Ohio Supreme Court, which affirmed the conviction, expressed it, *"there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home."*

The State says that *"even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial."*

Miss Mapp appealed her case to the U.S. Supreme Court and won with the following court opinion: *"Today we once again ... examine the constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."*



## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_

#### Student Handout: *MAPP v. OHIO* cont.

In extending the substantive protections of due process to all constitutionally unreasonable searches, state or federal, it was logically and constitutionally necessary that the exclusionary doctrine-an essential part of the right to privacy-be also insisted upon as an essential ingredient of the right newly recognized by the case. In short, the admission of the new constitutional right could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure.

There are those who say, as did Justice Cardozo, that under our constitutional exclusionary doctrine, *"the criminal is to go free because the constable has blundered."* In some cases this will undoubtedly be the result. But, as has been said *"there is another consideration-the imperative of judicial integrity. The criminal goes free, if he must, but it is the law that sets him free."* Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard for the charter of its own existence. As Mr. Justice Brandeis said *"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."*



## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE

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#### Student Handout: THE CASE OF BILLY GREENWOOD

The police suspected that Bill Greenwood was involved in dealing drugs. They observed many vehicles making brief stops at his house during late-night hours, and one truck was followed from Greenwood's house to another residence which had previously been investigated for drug sales.

The police asked the garbage collector to pick up Greenwood's plastic garbage bags which he had left on the curb in front of his house and turn them over without mixing them with other garbage. Upon opening them, the police found evidence of narcotics use. Based on this evidence, they obtained a search warrant for Greenwood's house and discovered quantities of cocaine and hashish. Greenwood was arrested and convicted based on this evidence.

Was the police search of the garbage illegal? Should the evidence of that search have been allowed to be the basis of a search warrant which resulted in Greenwood's conviction? This case was appealed to the U.S. Supreme Court, and the justices wrote two different opinions in the case. Read summaries of the two opinions and answer the questions that follow.

#### Opinion #1

*"The Framers of the Fourth Amendment understood that 'unreasonable searches' of 'papers and effects'--no less than 'unreasonable searches of persons and houses'--infringe privacy. . . . In short, so long as a package is 'closed against inspection,' the Fourth Amendment protects its contents, 'whenever they may be,' and the police must obtain a warrant to search it just 'as is required when papers are subjected to search in one's own household.' . . .*

*"A trash bag . . . 'is a common repository for one's personal effects,' and, even more than many of them, is 'therefore . . . inevitably associated with the expectation of privacy.' . . . A search of trash, like a search of the bedroom, can relate intimate details . . . . Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target's financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests. It cannot be doubted that a sealed trash bag harbors telling evidence of the 'intimate activity associated with the sanctity of a man's home and the privacies of life,' which the Fourth Amendment is designed to protect."*

Allowing searches of trash bags without warrants paints a grim picture of our society. It would be a society which says that it is unreasonable to expect privacy in personal effects sealed in a container and disposed in a manner where it would be combined with the trash of others. Consequently, we hold that the search was illegal under the Fourth Amendment, and that the items found should not have been used to convict Greenwood.

## RIGHTS OF THE ACCUSED

### THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_

Student Handout: THE CASE OF BILLY GREENWOOD cont.

#### Opinion #2

People are only protected by the Fourth Amendment's freedom from *"unreasonable search and seizure if they have a reasonable expectation of privacy"* with respect to the trash that was searched by the police. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, or others. They have also been left there so that a third party, a trash collector, can take the garbage and perhaps sort through it.

Accordingly, having deposited their garbage in *"an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it,"* the persons could have had no reasonable expectation of privacy in the items they discarded.

Prior cases of the court have held that *"a person has no expectation of privacy in information he voluntarily turned over to third parties."* For example, one case allowed the police to install a pen register at the phone company to record the phone numbers a suspect called and then used this information as evidence against him in court. In addition, another case allowed surveillance by an airplane without a warrant of a fenced backyard for purposes of detecting marijuana begin grown. The police should be permitted to gather evidence that any member of the public could also see and gather. Therefore, we hold that the trash collected may be used as evidence against Greenwood.

#### Questions:

- A. What are the two strongest arguments in Opinion #1? Why?
- B. What are the two strongest arguments in Opinion #2? Why?
- C. Which opinion do you agree with? Give reasons.
- D. Which opinion do you think represents the views of the majority of the justices on the Supreme Court? Which is the minority view?
- E. What is the importance of allowing the evidence to be used in the case against Greenwood? Could he be arrested and convicted without such evidence?
- F. Can private citizens go through one's trash without violating the law? What if a reporter does this to gather information for a news article? Should the law protect against such searches? Why or why not? Is your answer different if the reporter went into the person's garage to go through the trash? Could the police do that without a warrant?

## **RIGHTS OF THE ACCUSED**

### **THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_**

#### **ANSWER KEY: The Case of Billy Greenwood**

- A.** Two arguments for Opinion 1 are that 1) the search violated the right to privacy, and 2) the individual disposed of the containers that were closed, with the belief that the bags would be mixed with others, and therefore has a reasonable expectation to privacy.
- B.** Two arguments for Opinion 2 are based on the concept that there was not a reasonable expectation of privacy because 1) the trash is collected by a third party, and 2) the trash is easily accessible to the public.
- C.** Students' answers may vary.
- D.** The Supreme Court, in a 6 to 2 decision, found the search was legal, thus restricting the circumstances under which one has a reasonable expectation of privacy.
- E.** The results set the precedent that trash inspection by police is legal, thus restricting the circumstances under which one has a reasonable expectation of privacy. Without this evidence, it appears from the facts in the case that the police would not have had probable cause to arrest Greenwood.
- F.** Reporters sometimes search trash to learn more about the people in the news. When the trash taken is on the person's property, the reporter may be trespassing and committing theft. If trash is on the street, it is probably legal to take it.

## **RIGHTS OF THE ACCUSED**

### **THE RIGHTS OF THE ACCUSED IN SEARCH AND SEIZURE \_\_\_\_\_**

#### **Student Handout: COMPARING RIGHTS**

##### ***The Rights of the Accused in the Case of Search and Seizure in South Viet Nam.***

Viet Nam is a country in southeast Asia. Under the Geneva Agreement in 1954 Viet Nam was divided into two countries at the 17th parallel: North Viet Nam was under the Communist regime, and South Viet Nam was a Republic. After the division of the country, Vietnamese communists waged a war in South Viet Nam for many years until it could control the whole country in 1975. The rights of the accused in the South Viet Nam before and after 1975 were different.

##### **Before 1975**

The Republic of Viet Nam had a Constitution much like the U.S. Constitution, but it did not have the 10 Amendments. Therefore, the rights of the accused were not constitutional rights.

Although a search warrant was also mentioned in South Viet Nam criminal procedure, in many cases, the police did not obtain a search warrant, the accused person seldom questioned this practice, and the evidence seized in this case was admissible in the court.

##### **After 1975.**

Under the Communist regime, although the Communist government claims that it is a Republic and has a Constitution, it seems that the country is a lawless state. The police can search people or houses anytime they want, and the people can be arrested and put in jail without a trial for an unlimited time.

## RIGHTS OF THE ACCUSED

### SEARCH AND SEIZURE: WHAT DOES IT MEAN? \_\_\_\_\_

## Search and Seizure: What Does It Mean?

by Gary Heath

### Students will:

1. Learn the old meaning of the "search" law.
2. Learn the Fourth Amendment is more than property rights and trespass.
3. Learn an arrest is a "seizure" of a person.

**Materials needed:** Copies of: **Student Handout: WHAT'S YOUR OPINION**  
**Student Handout: FOURTH AMENDMENT**  
**Student Handout: WHAT'S WRONG WITH THIS WARRANT?**

**Time needed:** One to two class periods

**Grade level:** Secondary special education (juvenile correction facility)

### Procedure:

1. Use the **Student Handout: WHAT IS YOUR OPINION?** to focus student attention on issues related to the rights of the accused and the government's interest in apprehending, convicting and punishing criminals. Tally on chalkboard and discuss student responses.
2. Put the following terms on the board: *probable cause, search, seizure, plain view*. Pair up students and have them write a 3 or 4 line definition for each term. Have each pair read their definition. Put key words or phrases on the board under each term. Inform them that these terms relate to the Fourth Amendment of the Bill of Rights. Explain to them that in recent years, the U.S. Supreme Court has handed down decisions about "guidelines" against unreasonable searches and seizures.

**Examples - *Mapp v. Ohio* (1961).** Searches must be conducted legally or evidence seized will not be admissible.

***Katz v. U.S.* (1967).** Police cannot plant a listening device in a public telephone to gather evidence.



## **RIGHTS OF THE ACCUSED**

### **SEARCH AND SEIZURE: WHAT DOES IT MEAN?** \_\_\_\_\_

#### **Procedure cont.**

*U.S. v. Watson* (1976). Probable cause is necessary for a search but a warrant is not always needed before an arrest or search is conducted.

*New York v. Belton* (1981). Police have the right to search an entire car when arresting someone.

**3.** Use the **Student Handout: WHAT'S WRONG WITH THIS WARRANT?** and copies of the **Student Handout: FOURTH AMENDMENT**. Divide class into small groups and have each group carefully read through the amendment. Groups should then read the warrant and make a list of any Fourth Amendment violations they can find. Discuss these with the rest of the class. (There are probably five things wrong with the arrest warrant.)

**4. Ending Activity.** Do one of the following:

A. Have students make a poster illustrating an unreasonable search or seizure as they understand it.

B. Have students think of a time when any of their rights were violated? Describe the way in which they were violated. (In a juvenile correction center, students will usually relate well to this question.)

Part of this lesson is adapted from *Bill of Rights in Action*, Constitutional Rights Foundation, Los Angeles, CA.

## RIGHTS OF THE ACCUSED

### SEARCH AND SEIZURE: WHAT DOES IT MEAN? \_\_\_\_\_

#### Student Handout: WHAT'S YOUR OPINION

**Directions:** For each, select the response that most closely reflects your opinion.

|                                                                                                                                                         | Agree | Disagree | Undecided |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|-----------|
| 1. The death penalty is a necessary form of punishment for those convicted of murder.                                                                   |       |          |           |
| 2. Those accused of a crime should be forced to testify at their trial.                                                                                 |       |          |           |
| 3. Would you be willing to give up some of your rights so that police could fight crime more effectively?                                               |       |          |           |
| 4. Lawyers should never defend a person they believe to be guilty of a crime.                                                                           |       |          |           |
| 5. Protecting an individual's constitutional rights is more important than convicting the guilty.                                                       |       |          |           |
| 6. Police should be given a free hand to apprehend those who commit criminal acts.                                                                      |       |          |           |
| 7. All police officers should be required to submit to mandatory drug testing to ensure that they are not using illegal drugs.                          |       |          |           |
| 8. Should the police be required to give the <i>Miranda</i> warnings to everyone they suspect of a crime instead of just to those they have in custody? |       |          |           |
| 9. Police should not be able to stop any car unless they have reason to believe the driver has committed a violation of the law.                        |       |          |           |

## **RIGHTS OF THE ACCUSED**

### **SEARCH AND SEIZURE: WHAT DOES IT MEAN? \_\_\_\_\_**

#### **Student Handout: FOURTH AMENDMENT**

##### **Amendment IV:**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.*

##### **In other words this means:**

The people, their homes, and their property are safe from unfair searches. A person and the things he or she owns cannot be taken away except in ways that follow the law. Before seizing evidence or people, a search warrant or arrest warrant must be given by a court. However, it can be given only for good reasons. Persons who want a search warrant must promise they are telling the truth. They must explain why they want the warrant. If they plan to search, they must say beforehand what place is to be searched. If they plan to take someone or something away, they must say beforehand what person or things are to be taken.

**RIGHTS OF THE ACCUSED**

**SEARCH AND SEIZURE: WHAT DOES IT MEAN?** \_\_\_\_\_

**Student Handout: WHAT'S WRONG WITH THIS WARRANT?**

**WARRANT**

To any sheriff, policeman, or peace officer in the country:

PROOF having been made before me under oath by Officer Charles Paxton that there is probable cause to believe stolen property may be found at the location described below, you are hereby commanded to search the residences in the southside of this city. You are further commanded to seize any objects or papers you believe might be connected with thefts that have occurred in this city. You are also authorized to use whatever means you believe are necessary to uncover stolen property that may be hidden in residences described above. You are finally commanded to arrest any person who you believe may be a criminal.

Judge of the Court

## **RIGHTS OF THE ACCUSED**

### **UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT**

## **Understanding Some Implications of the Fourth Amendment**

**by Edna Langerock**

This lesson is designed to first make students aware of the Fourth Amendment and then to have students deal with specific cases which relate to search and seizure and to recognize its implications on each of us as citizens of the United States.

#### **Students will:**

1. Be able to generalize the Fourth amendment.
2. Be able to identify some implications and interpretations of the Fourth Amendment which have been set down by the Supreme Court.
3. Compare and contrast four cases which refer directly to the Fourth Amendment.
4. Demonstrate thinking skills so when case information is provided, they will identify the key facts and be able to make reasonable predictions based upon the given information. (Using inductive and deductive skills.)

**Materials needed:** Copies of: **Student Handout: ROLEPLAY**  
**Student Handout 1: Wolf v. Colorado**  
**Student Handout 2: Mapp v. Ohio**  
**Student Handout 3: U.S v. Rabinowitz**  
**Student Handout 4: N.J. v. TLO**  
(only enough copies for 1/4 of class)  
**Student Handout: YOU BE THE JUDGE!**  
**Fourth Amendment (See Appended Materials)**  
Four chairs; Six Cans

**Time needed:** Approximately 7 class periods

**Grade level:** 9th grade. This lesson is designed to be used with a ninth grade civics course, but it may be very applicable to junior high History or senior high History.



## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Procedure:

#### DAY 1

1. The first day's activity starts with a role play situation. (**Student Handout: ROLE-PLAY**) Ask for 4 volunteers (2 boys and 2 girls). Provide these four students with their appropriate roles. Let them dismiss to the hall for 4 or 5 minutes while you and the remainder of the students set up the room.

2. Set up four chairs with two in a row --like the seating capacity in a midsize car. Let the remaining students in the room realize that the setting is about 10:30 pm on Friday night.

3. Ask the four students to return to the room and to take a seat in the "car."

4. The teacher now plays the role of the police officer. As the students start to "play their part," have a siren start to blow. The teacher approaches the driver's side of the car. Here are some possible questions that the teacher may ask:

A. Did you know that your taillight was broken?

B. Do you have any identification? (ask for each)

C. Do you own this car?

D. Where were you this evening?

E. What have you been doing?

F. Have you been drinking? (you smell liquor from the vehicle: probable cause)

G. Please remove yourself from the car.

H. Search the car -- you find 5 empty beer cans and 1 full can

I. Is this your beer?

J. Where did you get the beer?

...the questioning should continue as far as it can possibly go without the four "victims" becoming angry.

5. **STOP.** Have the entire class divide into pairs. The students are to make a listing of the events as they remember what happened. Give them 5-10 minutes maximum.

6. Now, with the class as a whole, have one person as scribe write the events on the board. After the situation is fully reviewed, ask the students two questions.

A. What are your rights in this situation?

B. What would you have done?

7. With the discussion of the first question, if the class has trouble getting started, you may want to pose some of these questions.

## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Procedure cont.

- A. Do we as citizens (juveniles) have any rights? If yes, where do we get them?
  - B. How could we find a list of those supposed rights? Where should we look?
8. With the discussion of the second question, possible starter questions might include:
- A. Would you get angry?
  - B. What would you answer the officer?
  - C. Would you have responded like the four "*characters*" did?
  - D. Would your response have been different?

#### DAY 2

1. Continue discussion from Day 1 if the students were not ready to stop. Have the **Fourth Amendment** (see Appended Materials) printed on the chalkboard for the entire class to see. (You may want them to jot the Fourth Amendment down in their notebooks.)
2. Have the students identify what they believe are the key words in the Amendment. Make sure to discuss the meaning of specific terms such as "*unreasonable*," "*search and seizure*," and "*probable cause*."
3. Have the students divide into groups of two or three. They will be given 5-7 minutes to write the Fourth Amendment in their own words as they see fit. One person is the recorder. At the end of this time, someone other than the recorder reads the group's version of the Fourth Amendment to the class. After each group has participated, the class identifies some of the good statements (or parts of) which were provided by each group. Have some reread if necessary.

#### DAY 3

1. Have the class divide into groups of four. Organize these groups as soon as class begins. Explain to the class that to better understand the implications and interpretations of the Fourth Amendment, they will look into some of the Supreme Court cases that directly relate to this amendment.
2. Have each student in each group of four take a number from one to four. Have the ones from each group gather in a specific location in the room. Do the same with the twos, threes, and fours. Each new group will be given a specific case that they are assigned to read/ note for the day. (Student Handouts 1-4) They may start discussing the case if everyone finishes reading/noting the case. (Jigsaw Method)

## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Procedure cont.

**Group 1:** *Wolf v. Colorado*

**Group 2:** *Mapp v. Ohio*

**Group 3:** *U.S. v. Rabinowitz*

**Group 4:** *New Jersey v. T.L.O.*

A very brief summary of the Supreme Court's decision in each case is:

#### *Wolf v. Colorado* (1949)

Since this case involved a state court for a state crime, the Fourth Amendment, which is a federal law, does *not* necessarily eliminate evidence which was acquired by an unreasonable search and seizure.

#### *Mapp v. Ohio*, 376 U.S. 643 (1961)

The Supreme Court ruled that evidence that was acquired in an illegal search and seizure situation was *not* admissible in a state court just as it wouldn't be in a federal court. (This overruled the *Wolf v. Colorado* decision)

#### *U.S. v. Rabinowitz* (1950)

Since this case involved a legal arrest, the evidence acquired at the scene was indeed admissible in court even though the arresting officers had no search warrant. (Search incident to an arrest is an exception to the search warrant requirement.)

#### *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

The Supreme Court ruled that students do not lose their rights at the school door, but that school authorities are within their rights to search without a warrant provided they have reasonable grounds to do so.

### DAY 4

1. The numbered groups are to meet and identify the key facts and issues of their particular case. Each group is to come up with a brief summary of the case and the decision of the Supreme Court. Halfway through the class period these "groups" will go back to their original groups. Each person's responsibility will be to "teach" their original group about their specific case. (maximum time per student would be 15 minutes.)

### DAY 5

1. Each person continues explaining to their original group members. The maximum time to finish would be 30 minutes.

## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Procedure cont.

2. At the end of this thirty minute time period, bring the entire class back together. Briefly review the implications/interpretations of the Fourth Amendment as they were used in each specific court case.
3. **Assignment:** (A) Ask students to write a brief paragraph explaining how the Fourth Amendment could have been used in the role play from the first day of the lesson, or (B) How does the Fourth Amendment apply to you?

#### DAY 6

1. Collect the student essays. Provide students with **Student Handout: YOU BE THE JUDGE**. Their assignment is to read the case and to write a decision on what they believe the Supreme Court would have decided. Student decisions will be individually collected the next class period.

#### DAY 7

1. **Summary Day:** Collect the decisions from the students, then discuss the case in question and provide the actual Supreme Court decision. (**TEACHER BACKGROUND: *Alabama v. White***) Discuss the changes in the Supreme Courts interpretation and have them predict how they believe the future Supreme Court will interpret this amendment. What will be some of the items they will consider? What other situations may come into question?

## **RIGHTS OF THE ACCUSED**

### **UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT** \_\_\_\_\_

#### **Student Handout: ROLEPLAY**

*Instructions: Make one copy per class, cut and give to the respective volunteer*

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##### **Joe**

You are a 17-year-old junior in the local high school. You come from a middle income family and are presently driving your family's second car, a 1977 Ford LTD. You and your three friends spent the evening in a local community park. You drank a couple of beers between 8:00 - 10:00 p.m. It is now 10:30 p.m., and you are driving your friends home. You are dominating the conversation in the car on the way home; you are a member of varsity speech. You have never been stopped by a police officer.

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##### **Shelly**

You are a sixteen-year-old cheerleader for the local varsity basketball team. You and your three friends had spent the evening in a local community park. You consumed two cans of beer between 8 and 9 p.m. You are a passenger in the car driven by Joe. You normally are very talkative, but tonight in the car with your friends on the way home you are very loud and then very quiet. The alcohol had this effect on you. You also develop the hiccups.

---

##### **Reggie**

You are the local high school jock who plays basketball. You and your three friends had spent the evening drinking and talking in the park. A friend of yours from a local college supplied your group with the six-pack of beer. Even though you are a jock, you normally are quite reserved in your actions as well as in your conversations, but you do get sarcastic when you have been drinking. Tonight you had two beers, and you are quite rude in the car on the way home.

---

##### **Beth**

You are a seventeen-year-old junior from a middle income family. You and your three friends spent the evening drinking and talking in a local community park. You didn't drink any beer tonight, but you have done so in the past. You are a very opinionated person who speaks exactly what you believe. You had volunteered to drive home, but Joe refused to let you because it was his parent's car and he claimed that he was fine. You and your friends are now on the way home. Much talking and laughing fills the car.

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## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Student Handout 1: *Wolf v. Colorado*, 338 U.S. 25 (1949)

Dr. Wolf was a practicing physician who was convicted of the crime of conspiracy to commit abortion. The police seized his appointment books from his office without a search warrant. The evidence was admitted during the trial. Dr. Wolf appealed his conviction.

On appeal, the question asked by the Supreme Court was: Does a conviction by a state court for a state offense deny the "*due process of law*" required by the 14th Amendment, solely because evidence that was admitted at the trial was obtained under circumstances which would have rendered it inadmissible in a prosecution for violation of a federal law in a court of the United States because there deemed to be an infraction of the Fourth Amendment?

*"The security of one's privacy against arbitrary intrusion by the police--which is at the core of the Fourth Amendment--is basic to a free society."* However, the Court went on to say that the way in which this right is protected is not limited to the methods used by the Federal Courts (excluding evidence illegally obtained from the trial). Recognizing that there may be varying solutions in addition to the exclusionary rule, the Court held that the State of Colorado was not prohibited from admitting evidence obtained in an unreasonable search and seizure.

## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Student Handout 2: *Mapp v. Ohio*, 367 U.S. 643 (1961)

On May 23, 1957, three Cleveland police officers arrived at the home of Ms. Mapp looking for a person hiding out in the home, who was wanted for questioning in connection with a recent bombing, and for a large amount of gambling materials being hidden in the home. Ms. Mapp refused to let the officers enter without a search warrant. The officers waited until three hours later when four additional officers arrived. Then they forced open a door and entered the home. The officers would not permit Ms. Mapp's lawyer to either enter the house or to talk to Ms. Mapp. When Ms. Mapp demanded to see a search warrant, the officers held up a piece of paper that they claimed was a search warrant. Ms. Mapp grabbed the paper and placed it inside her shirt. The police officers struggled with Ms. Mapp, retrieving the paper. They then handcuffed Ms. Mapp because she was belligerent and thoroughly searched the whole house. In the basement, they found a trunk containing obscene materials. Ms. Mapp was charged with and convicted of possessing obscene materials.

During the trial, no search warrant was produced by the prosecution nor was the failure to produce one explained. Ms. Mapp's attorney argued to have the evidence excluded, but the Court denied the request.

On appeal to the U.S. Supreme Court, the state argued that even if the search was made without authority or in an otherwise unreasonable manner, the prosecution was not prevented from using the evidence in the trial. Pointing to *Wolf v. Colorado*, the prosecution argued that the Fourth Amendment does not apply to the states.

The U.S. Supreme Court disagreed, ruling that the state as well as federal courts cannot admit evidence in a trial that has been seized in violation of the Fourth Amendment search requirements. The Court said "*the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold.*" Since this case, the exclusionary rule has applied to every trial court in the country.

## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Student Handout 3: *U.S. v. Rabinowitz*, 339 U.S. 56 (1950)

Federal authorities were informed that the defendant was dealing in stamps bearing forge overprints. On the basis of that information, they secured a warrant for his arrest, which they executed at his one-room business office. At the time of the arrest, the officers searched the desk, safe, and file cabinets in the office for about an hour and a half and seized 573 stamps with forged overprints. The stamps were admitted into evidence at the trial.

The Supreme Court affirmed the conviction, rejecting the contention that the warrantless search had been unlawful. The Court held that the search in its entirety fell within the principle giving law enforcement authorities *"the right to search the place where the arrest is made in order to find and seize things connected with the crime."* The Court said that the test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.

This case has come to stand for the proposition that a warrantless search *"incident to a lawful arrest"* may generally extend to the area that is considered to be in the possession or under the control of the person arrested. This is needed to ensure the arresting officer's safety by disclosing and removing any weapons that the defendant might seek to use in order to resist arrest or effect his or her escape.

In a dissent, Justice Frankfurter pointed out that the Fourth Amendment's proscription of unreasonable searches and seizures must be read in light of *"the history that gave rise to the words"--a history of "abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution."* The Amendment was a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence.

## RIGHTS OF THE ACCUSED

### UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT \_\_\_\_\_

#### Student Handout 4: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

A teacher at a New Jersey high school observed student T.L.O. and another student smoking cigarettes in the girl's restroom. (Initials are used because the student is a minor.) The school allowed smoking in designated areas, but it was against the rules to smoke in a restroom. The two girls were taken to see the vice-principal, Theodore Choplick.

Mr. Choplick questioned T.L.O., but she denied that she had been smoking. Choplick demanded to see her purse. He found a pack of cigarettes and a package of cigarette rolling papers in the purse. Because the rolling papers made him suspicious, Mr. Choplick searched the entire purse. He then found some marijuana, a pipe, plastic bags, an index card reading "*people who owe me money*" followed by a list of names, and two letters that implicated her in marijuana dealing.

T.L.O. was charged with delinquency in juvenile court. T.L.O.'s lawyers tried to have the evidence excluded, claiming that it violated the Fourth Amendment. The court disagreed and found T.L.O. delinquent.

On appeal, the Supreme Court was asked to decide if the Fourth Amendment prohibition against unreasonable searches and seizures, and the requirement for probable cause applied in school situations. The Court stated that although a vice-principal cannot escape the Bill of Rights because of his/her authority over schoolchildren and that schoolchildren have an expectation of privacy, there must be a balance between these interests and the school's equally legitimate need to maintain an environment in which learning can take place. The Court found that the warrant requirement requiring probable cause was not suited to the school environment, that instead schools should be held to a reduced level of suspicion--*reasonable cause*--to justify a search.

## RIGHTS OF THE ACCUSED

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#### **Student Handout: YOU BE THE JUDGE!**

**Instructions:** Students are to read the following case and to write their own Supreme Court decision. Make sure your decision is backed with supporting arguments.

On a spring afternoon in 1987, in the afternoon, a local police station received a phone call. The anonymous person calling told the police that a Ms. Smith at 2424 Freming Avenue would be leaving in an old Plymouth station wagon. This Ms. Smith would be heading toward the Ace Motel and that she would have drugs in her possession.

The officers proceeded to the said address and identified a car fitting the description. Shortly thereafter, a woman came out of said address and drove off in the Plymouth station wagon. The police followed the car as it headed in the direction of the Ace Motel. As the station wagon got closer to the motel the officers decided to pull the car over.

The police officer requested that the woman driver please step to the rear of the car. He told her about their suspicion of her carrying drugs. He then asked her for permission to look in her car; she granted him this right. Inside the car they found a locked briefcase. The woman gave them the combination to open it. The police officer found marijuana in this case and placed Ms. Smith under arrest. When the officers went through Ms. Smith's bag at the station, they also found three milligrams of cocaine. Ms. Smith was charged with possession of both controlled substances: marijuana and cocaine.

**Q.** Did the police have the right to stop and search Ms. Smith and her car? Will the evidence be admissible?



**RIGHTS OF THE ACCUSED**

**UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT** \_\_\_\_\_

**TEACHER BACKGROUND: *Alabama v. White***

The case the students are interpreting is actually *Alabama v. Vanessa Rose White* which was decided by the Supreme Court on June 11, 1990. The Supreme Court held that the police did indeed have the right to make the initial stop. They based their decision on the following pieces of information:

- a) the anonymous tip did match with the actions/movements of Ms. White
- b) Since the tip and the police investigation collaborated they would be able to ascertain that the tip was indeed reliable

## **RIGHTS OF THE ACCUSED**

### **DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME** \_\_\_\_\_

# **Double Jeopardy Clause: A Fifth Amendment Constitution Trivia Game**

**by Kathi Kusch and John Branstrom**

The following lesson is intended to introduce students to the Fifth Amendment of the Bill of Rights and to interpret what certain constitutional rights mean in specific cases pertaining to the law. Students will apply such concepts as "*probable cause*" and the Miranda Law to situations given to them. Students will also develop an appreciation of how the legal system works and the complexity of applying specific concepts to unique situations.

This lesson consists of a series of sixteen jeopardy questions designed to generate thinking and discussion questions about the Fifth Amendment. It is our suggestion that these questions be used either as a small group activity where each group receives one question to think and discuss or as a large group activity whereby the questions could be read aloud. Students need to have a clear definition and understanding of the Fifth Amendment prior to doing this activity.

#### **Students will:**

1. Develop understanding of the criminal due process rights guaranteed by the Fifth Amendment.
2. Understand that people cannot be forced to say things that will incriminate themselves unless they volunteer the information.
3. Be able to interpret the concepts of the Fifth Amendment.
4. Demonstrate an understanding of the Fifth Amendment through conversation.

**Materials needed:** Copies of: **Fifth Amendment** (See Appended Materials)  
**Student Handout: TERMS TO KNOW**  
**Student Handout: DOUBLE JEOPARDY CLAUSE**

**Time needed:** approximately 1 class period

**Grade level:** 4th - 6th grades

#### **Procedure:**

1. Divide the class into small groups.

## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_

#### Procedure cont.

2. Go over **Student Handout: TERMS TO KNOW** before teaching this lesson. Cut up and hand out **Student Handout: DOUBLE JEOPARDY CLAUSE** law question cards. (Teacher decides how many.)

3. Each group will choose one person to be the reader, and only this person will be allowed to talk when the question is being read.

4. Each group will discuss the assigned question and ask the following questions:

- A. What are the important facts about this case?
- B. Does this case fit into the Fifth Amendment?
- C. What are the legal precedents which could alter the outcomes?
- D. What are the possible questions?

Questions students may ask:

- Q. What crime has been committed?
- Q. What are the rules for police officers?
- Q. What are the rules the police read to the people they arrest? (See **Miranda Rules** in **Student Handout: TERMS TO KNOW**.)
- Q. What rights do the victims have?
- Q. What happens if the accused agrees to give the stolen items back.
- Q. Who decides what the punishment(s) might be? What if the convicted persons feel it is not fair?
- Q. What if the convicted persons feel they did not get a fair trial? Is there anything they can do.

5. After the questions have been discussed, a representative from each group will present the findings to the entire class for discussion. (See **ANSWER KEY: Double Jeopardy Clause**.) The entire class will then evaluate the small groups findings and decide which answer would be the best and why.

6. Each small group will continue to discuss their findings with the entire class until every group has had a turn.

7. The teacher will decide which questions are used for the small groups and which are discussed by the class as a whole.

## **RIGHTS OF THE ACCUSED**

### **DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_**

#### **Procedure cont.**

8. One student in each group must be the writer and document the outcome of each question to share with the class.
9. Introduce the students to the need for compromise in the creation of the Constitution. Because of the varying interests, individuals frequently had to work together to find solutions that pleased everyone.
10. Discuss the need for this and the fact that without it, the convention would probably have ended without creating a Constitution.

## **RIGHTS OF THE ACCUSED**

### **DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_**

#### **Student Handout: TERMS TO KNOW**

**Miranda Rights:** You have the right to remain silent. You have the right to a lawyer. If you cannot afford one, one will be provided.

**Coercion:** Using force to get a person to confess to a wrong doing.

**Search Warrant:** Court document giving police the right to conduct a search. The warrant must tell what they are looking for, where they expect to find it, and the reason why.

**Probable Cause:** A good reason to believe something happened. Probable cause is needed to obtain a search warrant.

**Contraband:** Anything that is illegal for you to have in your possession.

**Self Incrimination:** You cannot be forced to testify against yourself.

**Immunity:** The court says that it will not prosecute you if you give testimony against another person.

**Curfew:** An order establishing a specific time during which certain restrictions apply.

**Plain Sight:** If officers conducting a legal search can see an illegal object or substance while searching for something else they can take it and charge the owner with possession.

#### **Miranda Law**

1. You have the right to remain silent.
2. If you choose to speak, anything you say may be held against you in a court of law.
3. If you decide to answer any questions, you may stop at any time and not answer any further questions.
4. You have a right to talk to an attorney before answering any questions. If you wish, you have the right to have your attorney present in the event you decide to answer questions, and if you cannot afford an attorney, one will be provided for you without cost to you before any further questions are asked.



## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME

#### Student Handout: DOUBLE JEOPARDY CLAUSE



1. Tom Tom, son of one of the town pipers was thought to have stolen a pig. A neighbor reported hearing some squealing and oinks coming from Tom's garage. Police came and wanted to search the garage. *Did they need a warrant?*



2. In answer to the question "Who's been sleeping in my bed?" Goldilocks replied "me Goldilocks." *Could this confession be used against her?*



3. The Big Bad Wolf is arrested for destroying the pigs house at 11:15 p.m. one night. You saw the crime being committed. You are called to testify against the wolf. You don't want to do that because you will have to admit being out after curfew. *Can you plead the Fifth Amendment?*



4. Batman is arrested for the murder of the Joker. He is taken to the police station and given the Miranda Warning. He says he does not want a lawyer and to go ahead and ask anything. They ask him if he killed the Joker and he says "I want a lawyer." *Can the police ask him anymore questions?*



5. Kirby Puckett stole 2nd base. Groundskeeper Dick Erickson needed it for the next game so he reported it to the police. *What three things would the police need to get a warrant to search Kirby Puckett's house?*



6. Snow White was found dead when the Dwarfs came home and found her body. Sleepy and Dopey took a miner's pick and shovel and visited Snow White's evil stepmother. They started to hit her with the pick and shovel until she confessed to giving Snow White the poisoned apple. *Can this confession be used in court?*

## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME

Student Handout: Double Jeopardy Clause cont.



7. Mary Had A Little Lamb, It's Fleece Was White As Snow. The Big Bad Wolf was charged with stealing her lamb as it followed her to school one day. He was tried in court and was found not guilty. At a press conference after the trial, he admitted taking the lamb. "It was wandering around, not knowing which way to go. I didn't know who it belonged to." *Can the wolf be tried with stealing the lamb again?*



8. The police were searching Keith Millard's house looking for a couple of quarterbacks he had sacked. They showed a valid search warrant as they entered his house. They did not find any quarterbacks, but they did find a copy of the Chicago Bears Playbook in a dresser drawer. *Can he be charged for theft of the playbook?*



9. Bobby Smith and Mike Modano were charged with taking the Stanley Cup from the Pittsburgh Penguins. Mike was given immunity for testifying against Bobby. *Can he refuse to testify on 5th Amendment grounds?*



10. Pooh Richardson was accused of taking Michael Jordan's shoes, hoping they would make it possible for him to jump higher. Police obtained a warrant to search the locker room and found the shoes in Pooh's gym bag. *Is this a legal search?*



11. Bart Simpson was arrested and charged with contributing to the delinquency of minors by telling kids not to go to school. When asked by police at the police station about this, he answered, "Sure I said it. I sell T-shirts that say it. It's made me what I am today." *Could this statement be used against him in a trial?*

## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_

Student Handout: DOUBLE JEOPARDY CLAUSE cont.



12. Roseanne Barr was charged with creating a public nuisance after her singing of the national anthem. At her trial, she did not testify. *Could the prosecuting attorney make an issue out of this fact in his closing arguments?*



13. *Do police have to give you the "Miranda Warning" before they question you after arresting you?*



14. You told a police officer that you saw a neighbor carry what appeared to be a big quantity of fireworks into his house on July 3rd. He had just come home from a trip to South Dakota. You have given the police good tips like this in the past. *Could this be considered probable cause for the police officer to obtain a search warrant for your neighbor's house?*



15. *Can contraband seized in an illegal search be required to be returned to the people that it was taken from?*



16. What is "plain sight?"

## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_

#### ANSWER KEY: Double Jeopardy Clause



1. Tom Tom, son of one of the town pipers was thought to have stolen a pig. A neighbor reported hearing some squealing and oinks coming from Tom's garage. Police came and wanted to search the garage. *Did they need a warrant?*

**Answer:** Yes, because they did not see Tom carrying any pigs into the garage.



2. In answer to the question "Who's been sleeping in my bed?" Goldilocks replied "me Goldilocks." *Could this confession be used against her?*

**Answer:** Yes, if Papa Bear wasn't a police officer and Goldilocks was not under arrest.



3. The Big Bad Wolf is arrested for destroying the pigs house at 11:15 p.m. one night. You saw the crime being committed. You are called to testify against the wolf. You don't want to do that because you will have to admit being out after curfew. *Can you plead the Fifth Amendment?*

**Answer:** Yes, if answering the question could get you into trouble for a curfew violation.



4. Batman is arrested for the murder of the Joker. He is taken to the police station and given the Miranda Warning. He says he does not want a lawyer and to go ahead and ask anything. They ask him if he killed the Joker and he says "I want a lawyer." *Can the police ask him anymore questions?*

**Answer:** No, you can ask for your rights at anytime. Any further questions would have to be asked with the lawyer present.



5. Kirby Puckett stole 2nd base. Groundskeeper Dick Erickson needed it for the next game so he reported it to the police. *What three things would the police need to get a warrant to search Kirby Puckett's house?*

**Answer:**

- A. What they are looking for (Second base.)
- B. Where they expect to find it. (Kirby's house)
- C. Reason they feel it is at Kirby's house. (Probable cause, 40,000 people in the dome and 285,000 on television saw him, and a neighbor saw him come home carrying a rectangular object.)



## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_

**ANSWER KEY: Double Jeopardy Clause cont.**



6. Snow White was found dead when the Dwarfs came home and found her. Sleepy and Dopey took a miner's pick and shovel and visited Snow White's evil step-mother. They started to hit her with the pick and shovel until she confessed to giving Snow White the poisoned apple. *Can this confession be used in court?*

**Answer:** No, the confession was coerced by the beating.



7. Mary Had A Little Lamb, It's Fleece Was White As Snow. The Big Bad Wolf was charged with stealing her lamb as it followed her to school one day. He was tried in court and was found not guilty. At a press conference after the trial, he admitted taking the lamb. "It was wandering around, not knowing which way to go. I didn't know who it belonged to." *Can the wolf be tried with stealing the lamb again.*

**Answer:** No, to do so would be in violation of the double jeopardy clause of the 5th Amendment.



8. The police were searching Keith Millard's house looking for a couple of quarterbacks he had sacked. They showed a valid search warrant as they entered his house. They did not find any quarterbacks, but they did find a copy of the Chicago Bears Playbook in a dresser drawer. *Can he be charged for theft of the playbook?*

**Answer:** Probably not. His lawyers would try to have the search declared invalid because the playbook was in a dresser drawer; a place you would not find a sacked quarterback.



9. Bobby Smith and Mike Modano were charged with taking the Stanley Cup from the Pittsburgh Penguins. Mike was given immunity for testifying against Bobby. *Can he refuse to testify on 5th Amendment grounds?*

**Answer:** No. He has been given immunity so he is not able to incriminate himself.



10. Pooh Richardson was accused of taking Michael Jordan's shoes, hoping they would make it possible for him to jump higher. Police obtained a warrant to search the locker room and found the shoes in Pooh's gym bag. *Is this a legal search?*

**Answer:** Yes. It is logical to find gym shoes in a gym bag. The evidence could be used against Pooh.



## RIGHTS OF THE ACCUSED

### DOUBLE JEOPARDY CLAUSE: A FIFTH AMENDMENT TRIVIA GAME \_\_\_\_\_

ANSWER KEY: Double Jeopardy Clause cont.



11. Bart Simpson was arrested and charged with contributing to the delinquency of minors by telling kids not to go to school. When asked by police at the police station about this, he answered, "Sure I said it. I sell T-shirts that say it. It's made me what I am today." *Could this statement be used against him in a trial?*

Answer: Not if he has not been given his Miranda rights.



12. Roseanne Barr was charged with creating a public nuisance after her singing of the national anthem. At her trial, she did not testify. *Could the prosecuting attorney make an issue out of this fact in his closing arguments?*

Answer: No. A person cannot be forced to testify against themselves.



13. *Do police have to give you the "Miranda Warning" before they question you after arresting you?*

Answer: If they want to use anything you say, they must give you the warning before they ask. If you volunteer information, it can be used in a court of law.



14. You told a police officer that you saw a neighbor carry what appeared to be a big quantity of fireworks into his house on July 3rd. He had just come home from a trip to South Dakota. You have given the police good tips like this in the past. *Could this be considered probable cause for the police officer to obtain a search warrant for your neighbor's house?*

Answer: Yes, because you have been a good source of information to this officer. It would constitute "probable cause."



15. *Can contraband seized in an illegal search be required to be returned to the people that it was taken from?*

Answer: No. Contraband seized can not be returned because of a legal or illegal search. Think about it. If it was illegal for you to possess it and they gave it back after an illegal search, they could seize it immediately and charge you with possession.



16. *What is "plain sight?"*

Answer: In conducting a legal search, if the searchers spot something that is illegal for you to possess, they have the power to take it. As long as one could reasonably expect to see it in conducting a legal search, it is considered to be in "plain sight."

## **RIGHTS OF THE ACCUSED**

### **"PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT** \_\_\_\_\_

## **"Pleading the Fifth"**

### **Self-Incrimination and the Fifth Amendment**

**by Tamara P. Uselman**

This lesson will teach students about the Fifth Amendment's protection against self incrimination by analyzing hypothetical situations applying the amendment.

#### **Students will:**

1. Learn that the Fifth Amendment protects against self-incrimination.
2. Learn about the application of the amendment, what is covered, what is not covered.
3. Apply their knowledge using discussion, compromising, debating, public speaking, analytical, and writing skills.

**Materials needed:** Copies of: **Student Handout: FIFTH AMENDMENT**  
**Student Handout: LECTURE WORKSHEET**  
**Student Handout: YOU BE THE JUDGE**  
**Student Handout: CITIZENSHIP MINI-QUIZ ON THE FIFTH**  
**Student Handout: PERSUASION SPEECH ON SELF-INCRIMINATION AND THE FIFTH AMENDMENT**  
Dictionaries

**Time needed:** 2 to 3 classes without essay, 4 to 5 classes with essay.

**Grade level:** 7th - 9th grades

#### **Procedure:**

1. Using **Student Handout: THE FIFTH AMENDMENT**, introduce students to the Fifth Amendment. Instruct them to read the Fifth Amendment and answer the questions.
2. Provide students with background information on the Fifth Amendment using the information contained in the teacher background. Have students complete **Student Handout: LECTURE WORKSHEET** at the close of the session. Review student answers using the key.

## **RIGHTS OF THE ACCUSED**

### **"PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_**

#### **Procedure cont.**

3. Divide the class into small groups. Tell them that they will be role playing judges as they apply the Fifth Amendment to a variety of cases. Remind them to remember information learned through the earlier lecture. They may wish to use the **Lecture Worksheet** for referral.
4. As a large group, review the decisions of the groups. Instruct students using the answer key.
5. Review what students have learned about the Fifth Amendment using the Student Handout: **CITIZENSHIP MINI-QUIZ ON THE FIFTH.**
6. Using the Student Handout: **PERSUASION SPEECH ON SELF-INCRIMINATION AND THE FIFTH AMENDMENT** have students prepare an essay. Students may present their essays as speeches to the class.

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### TEACHER BACKGROUND: Fifth Amendment

The Fifth Amendment has been used to protect people's rights throughout history, but really came to the fore in the last 35 years. In the early and middle 1960s, the Supreme Court began to empathize with society's underprivileged poor and minorities who made up a disproportionately large segment of the criminally accused. Decisions by the Court in the sixties expanded civil rights and increased protection from the "long arm of the law," of the state. One such expansion occurred in the area of avoiding self-incrimination, a protection provided in the Fifth Amendment.

In 1966, the U.S. Supreme Court decided the accused must be read his/her rights prior to being questioned while in police custody. (Those rights are: 1. you have the right to remain silent; 2. if you speak, anything you say can and will be used against you in a court of law; and 3. you have a right to have an attorney present during questioning. If you cannot afford an attorney, one will be appointed to you.) Since this Supreme Court case, if an accused is not read his/her rights by police prior to custodial questioning, the evidence may not be admissible in any trial, that results from the accusations. Prior to this *Miranda v. Arizona* decision, there was no requirement that the accused person be notified of his/her rights. This decision reduced the chances for abuses that could otherwise occur if an accused was coerced into admitting guilt (whether or not he/she was actually guilty).

It is important to note that in the last two decades, the Supreme Court has been less concerned with protecting the rights of the accused and more concerned with punishing those believed to be guilty in an effort to promote public safety.

Students need to realize the difference between the Supreme Court of the sixties and that of the seventies and eighties in order to understand the present interpretations of the Fifth Amendment, because ultimately, the Court interprets the Bill of Rights. In the sixties, the court was very committed to making certain that persons accused of crimes were guaranteed fair trials even if it meant a very slow, inefficient process. The belief then was, "*better a guilty person go free than a free person go to jail.*" Since the sixties, the Court has shifted to a commitment to sloving crime by lessening restrictions on police officers, and prosecutors, and limiting the rights of the accused. This change in philosophy is a result of increased violent crime and the war on drugs.

Students should be made aware of the two modes of thought. They must contemplate the advantages/disadvantages of either to a free society. They should ask themselves how many rights they are willing to give up to keep crime in check and if they believe the reduction of rights will ever make a less corrupt society.

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### Student Handout: THE FIFTH AMENDMENT

**DIRECTIONS:** Read Amendment V several times to yourself. Be prepared to answer the questions that follow it.

**Amendment V:** *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

1. This Amendment has many guarantees. Locate the phrase concerned with self-incrimination and recopy it in the space provided:
2. If you are accused of a crime, you are innocent \_\_\_\_\_ and \_\_\_\_\_ proven guilty.
3. When trying to prove guilt, whose job is it - yours to prove you are innocent, or the government's to prove you are guilty?
4. Explain the difference between the terms *questioning* and *inquisition*. (Use a dictionary if you want to.) While *questioning* means \_\_\_\_\_  
\_\_\_\_\_  
*inquisition* means \_\_\_\_\_  
\_\_\_\_\_
5. In a paragraph, explain why the government shouldn't be allowed to use inquisition techniques to get information from an accused person. How would doing so change our idea of justice?



## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### Answer Key: The Fifth Amendment

**DIRECTIONS:** Read Amendment V several times to yourself. Be prepared to answer the questions that follow it.

**Amendment V:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

1. This Amendment has many guarantees. Locate the phrase concerned with self-incrimination and recopy it in the space provided: **nor shall be compelled in any case to be a witness against himself**
2. If you are accused of a crime, you are innocent **unless** and **until** proven guilty.
3. When trying to prove guilt, whose job is it - yours to prove you are innocent, or the government's to prove you are guilty? **It is the job of the state to prove your guilt, but they cannot force you to testify against yourself while they are trying to prove their case.**
4. Explain the difference between the terms *questioning* and *inquisition*. (Use a dictionary if you want to.) While *questioning* means **asking while seeking information**, *inquisition* means **using force to arrive at a presumed answer**.
5. In a paragraph, explain why the government shouldn't be allowed to use inquisition techniques to get information from an accused person. How would doing so change our idea of justice? **Answers will vary but students should be directed to thinking about what our country would be like if citizens were coerced into confessing. Would real criminals be punished? How would the innocent be affected? Would students like to live in a country that practiced coercion? etc.**

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### Student Handout: LECTURE WORKSHEET

**DIRECTIONS:** Listen carefully as your teacher gives you information about the Fifth Amendment as it operates in our world today. Fill in the blanks (1-5) the information you hear from your teacher. You will use this information later when judging whether a person can legally "*plead the fifth*." Check your memory by answering 6-10.

*...nor shall be compelled in any criminal case to be a witness against himself....*

The phrase above copied from the Fifth Amendment has five limitations.

- 1.
- 2.
- 3.
- 4.
- 5.

6. Look at limitation one. Who listed here could refuse to testify by applying the Fifth Amendment?

- \_\_\_\_\_ Stan's Book Company
- \_\_\_\_\_ Your father
- \_\_\_\_\_ Hot-Wired Electric Association

7. Look at limitation 2. Check when an accused may refuse to answer, based on the Fifth Amendment:

- \_\_\_\_\_ on the witness stand during a murder trial (you have been accused)
- \_\_\_\_\_ in police custody
- \_\_\_\_\_ in a case where an accused may have to pay his neighbor for damages

8. What information may an accused refuse to give, under the Fifth Amendment?

- \_\_\_\_\_ address
- \_\_\_\_\_ present occupation
- \_\_\_\_\_ former employers

9. How many of the following represent *coerced* information:

- \_\_\_\_\_ testify or lose public employee retirement benefits
- \_\_\_\_\_ admit to a crime before allowed to sleep while in police custody
- \_\_\_\_\_ showing tax returns with implicating evidence.

10. The last limitation deals with *testimonial evidence*. Which of the following has the Supreme Court said is **NOT** testimonial in nature? (That is, you cannot use the Fifth Amendment to avoid giving this information.)

- \_\_\_ a blood test    \_\_\_ handwriting sample    \_\_\_ standing in a line-up    \_\_\_ verbal testimony

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### ANSWER KEY: Lecture Worksheet

Directions: Listen carefully as your teacher gives you information about the Fifth Amendment as it operates in our world today. Fill in the blanks (1-5) the information you hear from your teacher. You will use this information later when judging whether a person can legally "plead the fifth." Check your memory by answering 6-10.

*...nor shall be compelled in any criminal case to be a witness against himself....*  
The phrase above copied from the Fifth Amendment has five limitations.

1. *natural persons (associations such as unions, businesses, partnerships, or corporations cannot refuse to answer, based on Fifth Amendment)*
2. *criminal proceeding (including questioning when in police custody and continuing throughout the criminal procedure and trial,) does not include statements not related to criminal incrimination*
3. *self-incriminating evidence (just about any type of information can qualify since it may be incriminating; the witness must tell that he is using this Fifth Amendment privilege; he cannot just remain silent or he may be in contempt.)*
4. *forced or coerced in some way by the state (usually, if the witness is unable to use his free will, then his testimony has been coerced. If he voluntarily gives information when he is aware of his rights but regrets it later, the testimony is still admissible.)*
5. *concerning only evidence that is testimonial, not physical or real (The Court presently accepts non-verbal testimony, blood - urine tests, handwriting samples, line-ups, etc. This area has not been challenged extensively, however, and may change in the future)1*
6. Look at limitation one. Who listed here could refuse to testify by applying the Fifth Amendment?  
☐ Stan's Book Company  
☒ Your father  
☐ Hot-Wired Electric Association  
*(The first and last choices do not qualify as natural persons, even if a specific individual was testifying for Stan's or the electric association's businesses.)*
7. Look at limitation 2. Check when an accused may refuse to answer, based on the Fifth Amendment:  
☒ on the witness stand during a murder trial (you have been accused)  
☒ in police custody  
☐ in a case where an accused may have to pay his neighbor for damages *(This does not qualify for the Fifth because it is a civil case not meant to punish or deter illegal activity.)*

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### ANSWER KEY: Lecture Worksheet cont.

8. What information may an accused refuse to give, under the Fifth Amendment?

- ☒ address
- ☒ present occupation
- ☒ former employers

*(All the information may be self-incriminating and will probably go unchallenged because it is difficult to prove; the witness would have to state that he is taking the Fifth Amendment privilege.)*

9. How many of the following represent *coerced* information:

- ☒ testify or lose public employee retirement benefits
- ☒ admit to a crime before allowed to sleep while in police custody
- ☐ showing tax returns with implicating evidence. *(Not considered personal-prepared for others.)*

10. The last limitation deals with *testimonial evidence*. Which of the following has the Supreme Court said is NOT testimonial in nature? (That is, you cannot use the Fifth Amendment to avoid giving this information.)

- ☒ a blood test
- ☒ handwriting sample
- ☒ standing in a line-up
- ☐ verbal testimony

<sup>1</sup> Whitebread, Charles H. *Criminal Procedure: An Analysis of Constitutional Cases and Concepts*, CH.14, New York: The Foundation Press, Inc., 1980.

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### Student Handout: YOU BE THE JUDGE

**DIRECTIONS:** Decide whether testimony is admissible in the following examples, or whether you feel the accused has been coerced and the evidence is inadmissible. Be prepared as a group to defend your decision to the class. Remember to base all your decisions on what you have learned about the Fifth Amendment.

Mark each of the following as:      **A-Admissible**      **I-Inadmissible**

- \_\_\_\_\_ 1. Mr. Brown admits to murdering someone. Police knew he was guilty and got him to confess by hanging him upside down from a tree.
- \_\_\_\_\_ 2. A juvenile admits to a felony after being questioned by police from 12 midnight to five a.m.
- \_\_\_\_\_ 3. Ms. X is already indicted for murder. Her friend on the police force convinces Ms. X to confess by claiming he will lose his job unless a confession is made. His wife and three pretty children will suffer.
- \_\_\_\_\_ 4. A police woman poses as a psychiatrist and hears a confession.
- \_\_\_\_\_ 5. Police read an accused woman her rights and give her milk, sandwiches, and cigarettes when she asks for them while questioning her. She confesses.
- \_\_\_\_\_ 6. A mentally retarded citizen is arrested for rape. He immediately makes a seven minute confession upon entering the police car. He was not read his rights before confessing.
- \_\_\_\_\_ 7. A suspect is on a respirator, too ill to talk, sedated but conscious. He is read his rights and questioned for several hours. He admits his guilt by writing a confession.
- \_\_\_\_\_ 8. A person confesses after 36 hours of uninterrupted questioning.
- \_\_\_\_\_ 9. A man is told he may call his wife once he confesses.
- \_\_\_\_\_ 10. A contractor is told he will lose public projects unless he testifies against himself.



## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### ANSWER KEY: You Be The Judge

**DIRECTIONS:** Decide whether testimony is admissible in the following examples, or whether you feel the accused has been coerced and the evidence is inadmissible. Be prepared as a group to defend your decision to the class. Remember to base all your decisions on what you have learned about the Fifth Amendment.

Mark each of the following as:      **A-Admissible**      **I-Inadmissible**

- I**    1.      Mr. Brown admits to murdering someone. Police knew he was guilty and got him to confess by hanging him upside down from a tree.
- I**    2.      A juvenile admits to a felony after being questioned by police from 12 midnight to five a.m.
- I**    3.      Ms. X is already indicted for murder. Her friend on the police force convinces Ms. X to confess by claiming he will lose his job unless a confession is made. His wife and three pretty children will suffer.
- I**    4.      A police woman poses as a psychiatrist and hears a confession.
- A**    5.      Police read an accused woman her rights and give her milk, sandwiches, and cigarettes when she asks for them while questioning her. She confesses.
- A**    6.      A mentally retarded citizen is arrested for rape. He immediately makes a seven minute confession upon entering the police car. He was not read his rights before confessing.
- A**    7.      A suspect is on a respirator, too ill to talk, sedated but conscious. He is read his rights and questioned for several hours. He admits his guilt by writing a confession.
- I**    8.      A person confesses after 36 hours of uninterrupted questioning.
- I**    9.      A man is told he may call his wife once he confesses.
- I**    10.      A contractor is told he will lose public projects unless he testifies against himself.

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### Student Handout: Citizenship Mini-Quiz on the Fifth

Mark each of the following statements:    **T-True**    or    **F-False**

- \_\_\_\_\_ 1.    You do not have to testify against yourself in a criminal procedure.
- \_\_\_\_\_ 2.    You cannot testify against yourself in a criminal procedure.
- \_\_\_\_\_ 3.    Legally, police can make their jobs easier by bribing you to confess.
- \_\_\_\_\_ 4.    Once you are arrested, police can question you before reading you your rights.
- \_\_\_\_\_ 5.    Police can question you before your attorney is present.
- \_\_\_\_\_ 6.    Police can refuse to let you have an attorney if they know you are guilty.
- \_\_\_\_\_ 7.    You can refuse blood or urine tests under the Fifth Amendment.
- \_\_\_\_\_ 8.    You must testify against your union if you are on the witness stand in a trial involving the union in a criminal procedure.
- \_\_\_\_\_ 9.    You may use the Fifth Amendment in a civil procedure.
- \_\_\_\_\_ 10.    You confess to a crime and are found guilty. In prison, you realize you should have used the Fifth Amendment. You can demand a retrial which will leave out your confession.
- \_\_\_\_\_ 11.    In order to be put to death for murder, you must undergo a psychiatric evaluation. Once declared sane, you can be executed. You decide to use the Fifth Amendment to refuse the psychiatric evaluation for fear the results may be self-incriminating.
- \_\_\_\_\_ 12.    You have received immunity from prosecution but decide to plead the Fifth anyway. This is permissible, under the Fifth Amendment.
- \_\_\_\_\_ 13.    You walk into a police station and admit to a crime to get it off your chest. The prosecution can use this information against you, even though you had not been read your rights.
- \_\_\_\_\_ 14.    While being questioned by the police, you say you want to confess a crime. At this point, the police must interrupt you to read you your rights.

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### ANSWER KEY: Citizenship Mini-Quiz on the Fifth

Mark each of the following statements: **T-True** or **F-False**

- T**    **1.** You do not have to testify against yourself in a criminal procedure.
- F**    **2.** You cannot testify against yourself in a criminal procedure.
- F**    **3.** Legally, police can make their jobs easier by bribing you to confess.
- F**    **4.** Once you are arrested, police can question you before reading you your rights. (Confession will be inadmissible.)
- T**    **5.** Police can question you before your attorney is present. (You must request an attorney and then remain silent until he/she arrives. Police should not question you during the interval.)
- F**    **6.** Police can refuse to let you have an attorney if they know you are guilty.
- F**    **7.** You can refuse blood or urine tests under the Fifth Amendment. (These are not considered in the same category as verbal confessions.)
- T**    **8.** You must testify against your union if you are on the witness stand in a trial involving the union in a criminal procedure.
- F**    **9.** You may use the Fifth Amendment in a civil procedure. (Unless it will incriminate you in a criminal case.)
- F**    **10.** You confess to a crime and are found guilty. In prison, you realize you should have used the Fifth Amendment. You can demand a retrial which will leave out your confession. (Provided there was no coercion during your confession.)
- T**    **11.** In order to be put to death for murder, you must undergo a psychiatric evaluation. Once declared sane, you can be executed. You decide to use the Fifth Amendment to refuse the psychiatric evaluation for fear the results may be self-incriminating. (This was held true in Texas.)
- F**    **12.** You have received immunity from prosecution but decide to plead the Fifth anyway. This is permissible, under the Fifth Amendment.

**RIGHTS OF THE ACCUSED**

**"PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_**

**ANSWER KEY: Citizenship Mini-Quiz on the Fifth**

   **T**    **13.** You walk into a police station and admit to a crime to get it off your chest. The prosecution can use this information against you, even though you had not been read your rights. (You were not *"in custody."*)

   **T**    **14.** While being questioned by the police, you say you want to confess a crime. At this point, the police must interrupt you to read you your rights.

## RIGHTS OF THE ACCUSED

### "PLEADING THE FIFTH": SELF-INCRIMINATION AND THE FIFTH AMENDMENT \_\_\_\_\_

#### Student Handout: PERSUASION SPEECH ON SELF-INCRIMINATION AND THE FIFTH AMENDMENT

Your theme must have a title, an introductory paragraph with a clear thesis, at least three paragraphs of body or supporting detail in which you explain your ideas, using examples if necessary, and finally, your theme must have a conclusion paragraph that is clearly related to the main idea. Select a topic below, taking note that selection C involves research and requires more abstract ideas than either A or B. In each choice, you will be graded primarily on your ability to present a coherent, persuasive argument.

**A.** Consider the drug war and the challenges our society faces if we are to become more "*drug free*." Must police follow all their rules in dealing with suspected drug dealers? Why or why not? Explain your position, using yourself in an example.

**B.** Should evidence like blood test or urine tests which are presently thought of as real or physical but not testimonial evidence continue to be allowed in court? Are these forms of "*witnessing against oneself*"? Explain your position, using yourself in an example.

**C.** Over the last two decades, the Supreme Court has reduced the effectiveness of the Fifth Amendment. Would an expanded interpretation of the Fifth Amendment, specifically the self-incrimination clause, treat underprivileged minorities more fairly than the present interpretation? What is best for society in the short run? In the long run? Explain your position, considering socio-economic factors in your answer.



**RIGHTS OF THE ACCUSED**

**CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL** \_\_\_\_\_

**Case Studies on the Sixth Amendment:  
The Right to Counsel  
by Rich Barbeau**

**Students will:**

1. Trace the historical background of the right to counsel under the 6th Amendment to the U.S. Constitution,
2. Through the analysis of court cases, identify and discuss specific circumstances when a defendant has a constitutional right to the assistance of counsel and when a defendant does not have a constitutional right to be represented by counsel,
3. Identify the legal issues and legal arguments in the cases studied and evaluate the court's decisions.

**Materials needed:** Copies of: **SIXTH AMENDMENT** (See Appended Materials)  
**BACKGROUND READING: Right to Counsel**  
**Student Handout: YOU HAVE A CONSTITUTIONAL RIGHT TO COUNSEL WHEN...**  
**Student Handout: COURT DECISIONS: YOU HAVE A CONSTITUTIONAL RIGHT TO COUNSEL WHEN...**

**Time needed:** 4 class periods

**Grade level:** 9th - 12th grades

**Procedure:**

1. Begin the lesson by explaining to students that they will be examining court cases that involve a citizen's constitutional right to counsel.
2. Provide students with **SIXTH AMENDMENT** (could use overhead transparency).
3. Handout out copies of **BACKGROUND READING: Right to Counsel** and have students read material **OR** provide students with the information contained in the reading. Reading could be assigned prior to class meeting.

## RIGHTS OF THE ACCUSED

### CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_

#### Procedure cont.

4. Conduct a class discussion on the historical background of the right to counsel and how the U.S. Supreme Court has expanded the protection. Explain how the court has used the 14th Amendment due process clause to apply the 6th Amendment right to counsel to the states. It may be necessary to explain the appeals process in the U.S. Federal-State court system prior to the discussion.

5. Provide each student with **Student Handout: YOU HAVE A CONSTITUTIONAL RIGHT TO COUNSEL WHEN...** Explain to the class that the handout contains examples of real cases appealed to the U.S. Supreme Court. In some cases, the court ruled that a right to counsel must be observed, and in other cases the right was denied. Working in small groups, the students should read and discuss the facts in each case and make their own decision -- should the defendant have a constitutional right to counsel or not? Each small group should contain an odd number of students so that they can operate as a mini-appeals court and reach a majority opinion. In making their decision, the students should consider the following factors:

- A. The actual wording of the 6th Amendment to the U.S. Constitution.
- B. Whether a denial of the right to counsel would deprive the defendant of due process of law?
- C. Is the defendant's life\or liberty at stake?
- D. Whether the situation is, in their opinion, a "*critical stage*" of the criminal proceedings?
- E. Is the defendant faced with a legal problem that he\she could not understand?
- F. Is the situation an adversarial one?

6. Discuss the decisions made by the students and their reasoning. Provide the class with the actual decisions (**Student Handout: COURT DECISIONS: YOU HAVE A RIGHT TO COUNSEL WHEN...**) made by the U.S. Supreme Court and the legal reasoning. Have students identify the specific circumstances when a constitutional right to counsel exists and when it does not exist, according to the U.S. Supreme Court. Discuss the factors the court considers in its decision-making regarding this issue. How have these factors been used by the court to balance the individual rights to the accused and the safety of the general public? As the membership of the U.S. Supreme Court changed during the 1970's and 1980's did their interpretation of the right to counsel change as well? How?

## RIGHTS OF THE ACCUSED

### CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_

#### BACKGROUND READING: The Right to Counsel

The United States Bill of Rights was designed primarily to provide for democratic freedom and protect individual rights from governmental abuse. Four of the ten amendments that make up the Bill of Rights guarantee specific rights that limit the use of governmental power in dealing with persons accused of crimes. The fourth, fifth, sixth and eighth amendments protect the rights of the accused. The Fifth Amendment, in particular, provides in part, that "*No person shall be...deprived of life, liberty or property without due process of law...*" The concept of *due process of law* is an important principle of American justice and basically provides that in criminal cases a fundamentally fair system of rules and procedures must be followed to protect the accused. Historically, one of the most important rights involved in guaranteeing due process is the 6th Amendment right to counsel.

In the American criminal justice system, there are two sides-the government is represented by the prosecution and the accused is represented by the defense. This system is called the *adversary system*. It is assumed that if both sides have an equally fair chance to present their case the truth will emerge and justice will be served. Yet, what if the government is represented by a prosecutor and the defendant does not have counsel? Would this be fair? Would the accused be denied due process of law?

Today, in our legal system, the defendant has a right to be represented by counsel or to have counsel appointed by the court if she/he is indigent (lacking financial resources.) But, this constitutional protection has not always been provided to all defendants. The right to counsel has gradually developed on a case by case basis through the decision-making process of the U.S. Supreme Court.

Under common law in England, defendants accused of serious crimes were not provided with a right to counsel, and this situation did not change until 1836. Although in general we gained much from English common law, in regard to the right to counsel, we deviated from English tradition. In colonial America 12 of the 13 colonies had provisions for some right to counsel. Before the Bill of Rights were ratified, several states included in their constitutions a right to counsel in criminal proceedings. When the right to counsel in criminal prosecutions was proposed as a constitutional amendment in 1789, there was virtually no debate.

Throughout the 19th century, many states adopted similar statutory or constitutional provisions. For example, Minnesota's constitution was adopted in 1857 and included the right to counsel. Yet, the enforcement of the provision varied from state to state and in federal court as well. The U.S. Supreme Court did not begin an in-depth interpretation of the right to counsel until 1930's.

Then in *Johnson v. Zerbst*, 304 U.S. 458 (1938), the U.S. Supreme Court ruled that, based on the 6th Amendment, counsel must be supplied to a defendant in all *federal* felony criminal cases. But, did this decision apply to state criminal cases? Although the Supreme Court had ruled in *Barron v. Baltimore* 32 U.S. 243 (1833), that the U.S. Bill of Rights did not apply to state governments, the 14th Amendment, adopted in 1868, did prevent a state

## RIGHTS OF THE ACCUSED

### CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_

#### BACKGROUND READING: The Right to Counsel cont.

from violating a citizen's due process of law. Did this mean a state must provide counsel to all defendants? Not yet!

In *Powell v. Alabama* 287 U.S. 45 (1932), the Supreme Court applied the due process clause of the 14th Amendment to states and ruled that in cases in which the penalty is death, counsel must be provided to a defendant if the defendant cannot afford counsel at their own expense.

Ten years later, in *Betts v. Brady*, 316 U.S. 455 (1942), the Supreme Court ruled that the right to have counsel provided also exists in special circumstances (illiteracy, competency, etc.). Yet, no state is obligated to appoint counsel in every criminal case. Although the court had been using the due process clause of the 14th Amendment to apply some of the Bill of Rights to the states, the 6th Amendment right to counsel remained limited.

Finally, in *Gideon v. Wainwright* 372 U.S. 335 (1963), the court used the due process clause of the 14th Amendment to rule that the right to counsel applied to all serious state criminal trials, and indigent defendants in criminal proceedings in state courts have a right to have counsel appointed. In addition, in *Argersinger v. Hamlin* 407 U.S. 25 (1972), the court extended defendants rights by requiring trial judges to offer poor persons a lawyer in any case in which imprisonment was possible. Furthermore, in *In Re Gault* 387 U.S. 1 (1967), it was required that a child have a right to be represented by counsel in juvenile court proceedings which may result in the juvenile's commitment to an institution.

In summary, after almost forty years of decision-making, a citizen's right to be represented by counsel at the trial state of criminal proceedings was clearly defined. But what about other steps in the process? Do you have a right to be represented by counsel:

1. at a preliminary hearing?
2. at arraignment?
3. for an appeal?
4. at a lineup?
5. before giving a blood sample or a handwriting sample?
6. during interrogation by police?
7. at a sentencing hearing?
8. at parole and/or probation revocation hearings?

We will now look at these issues.



## **RIGHTS OF THE ACCUSED**

### **CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_**

#### **Student Handout: YOU HAVE A RIGHT TO COUNSEL WHEN...**

**CASE 1:** The accused was arrested by the police and taken into custody. He was interrogated at the police station regarding a murder. He was told that he had been named as the killer by an eyewitness. He asked to have advice from his lawyer. His lawyer arrived at the police station but was twice denied entry to the interrogation. The accused repeatedly asked to speak to his lawyer. **How would you rule?**

**Should you have a right to counsel during police interrogation while in custody?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 2:** In investigating certain robberies in which a robber used a handwritten note demanding that money be handed over to him. The police took a handwriting sample from the accused without the advice of counsel. **How would you rule?**

**Should you have a right to counsel when police are taking a handwriting sample?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 3:** In investigating a robbery, the police stopped and questioned two men. Both men produced I.D. that belonged to the victim of a robbery. The victim was brought in to identify the possible robber. The two suspects were not given counsel and police allowed the victim to try to identify the alleged robbers. **How would you rule?**

**Should you have a right to counsel during an investigative lineup?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 4:** The accused was arrested and formally charged with murder. At the arraignment (defendant makes a response to the charge), without the advice of counsel the defendant pled not guilty. **How would you rule?**

**Should you have a right to counsel at arraignment?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_



## RIGHTS OF THE ACCUSED

### CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_

**Student Handout: YOU HAVE A RIGHT TO COUNSEL WHEN... cont.**

**CASE 5:** The defendant was indicted for violating a Federal Narcotics law. He retained a lawyer, pled not guilty, and was released on bail. While out on bail and in absence of counsel, he held a conversation with a co-defendant in an automobile. The co-defendant had allowed a government agent to place a microphone in the car. Upon questioning by the co-defendant, the defendant made incriminating statements. **How would you rule?**

**Should you have a right to counsel in an interrogation while not in police custody after you have been formally indicted?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 6:** The accused was indicted for bank robbery and shortly before his trial an F.B.I. agent and the prosecutor showed five color mug shots, including one of the accused, to government witnesses, in the absence of the accused's counsel. **How would you rule?**

**Should you have a right to counsel at a photographic display conducted by the government to allow a witness to identify the suspect?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 7:** The defendant was arrested and charged with rape. At the preliminary hearing, he was identified by the complainant even though the defendant did not have counsel and was not offered counsel. The victim made the identification after being told that she was going to view a suspect, was given his name and heard the evidence against him. **How would you rule?**

**Should you have a right to counsel at a lineup after being formally charged?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 8:** The accused was convicted of the offense of "joyriding" He pled guilty and was given two years probation. Four months later, he was involved in a burglary. A court hearing was held to revoke his probation, he was not provided with counsel. He admitted the burglary and was sentenced to ten years in a jail (must serve one year). **How would you rule?**

**Should you have a right to counsel when pleading guilty and being sentenced?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

## RIGHTS OF THE ACCUSED

### CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_

**Student Handout: YOU HAVE A RIGHT TO COUNSEL WHEN... cont.**

**CASE 9:** The accused pled guilty to armed robbery. He was sentenced to 15 years in prison, the sentence was suspended and he was given seven years probation. Less than one month later, he was arrested for burglary and he admitted the crime. Without an attorney present, his probation was revoked and he began serving his 15 year sentence. **How would you rule?**

**Should you have a right to counsel at a probation revocation proceeding?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 10:** Two defendants were tried and convicted in a California court for several felonies. Although every defendant in a felony case in California is entitled to a first appeal, the defendants were denied appointed counsel for an appeal (they were indigent). **How would you rule?**

**Should you have a right to counsel when you have a right to an appeal?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 11:** The defendant was convicted of murder and sentenced to death. He had several appeals and lost them all. He was denied the appointment of counsel on another "discretionary appeal". **How would you rule?**

**Should you have a right to counsel in discretionary appeals?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**CASE 12:** An indigent defendant was convicted of shoplifting (less than \$150.00), and no counsel was provided. Although the penalty could have been as much as a \$500 dollar fine and 1 year in jail, he was fined \$50.00. **How would you rule?**

**Should you have a right to counsel if you are charged with a minor offense and imprisonment is not imposed?**

**GROUP DECISION** \_\_\_\_\_

**COURT DECISION** \_\_\_\_\_

**RIGHTS OF THE ACCUSED**

**CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_**

**Student Handout: YOU HAVE A RIGHT TO COUNSEL WHEN... cont.**

**CASE 13:** The accused was in a car accident. Because the police suspected the involvement of alcohol, a blood sample was taken at the hospital by a physician despite the defendant's refusal to consent to the test. **How would you rule?**

**Should you have a right to counsel before the police can take a blood sample from you as part of a precharge criminal investigation?**

**GROUP DECISION \_\_\_\_\_**

**COURT DECISION \_\_\_\_\_**

## RIGHTS OF THE ACCUSED

### CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_

#### Student Handout: COURT DECISIONS: YOU HAVE A RIGHT TO COUNSEL WHEN...

**CASE 1:** *Escobedo v. Illinois*, 378 U.S. 478 (1964). The court ruled that when an investigation has narrowed to a particular suspect, and that suspect is in custody, he has a right to counsel before interrogation. Custodial interrogations are a critical stage of the criminal process.

**CASE 2:** *Gilbert v. California*, 388 U.S. 263 (1967). The court ruled that you do not have a right to counsel when police are taking a handwriting sample. Police are simply investigating the crime, and it is not considered a critical stage of the proceedings. You can still have a fair trial and challenge the evidence at the trial. Defendant had not been indicted at the time of the taking of the sample.

**CASE 3:** *Kirby v. Illinois*, 406 U.S. 682 (1972). The court ruled that you do not have a right to counsel at an investigative lineup prior to indictment. The investigation was not part of the criminal prosecution, it was simply a matter of gathering evidence.

**CASE 4:** *Hamilton v. Alabama*, 368 U.S. 52 (1961). The court ruled that the defendant has a right to counsel at arraignment. This was determined to be a critical state of the criminal proceedings because the defendant may need legal advice regarding the plea and the defenses available.

**CASE 5:** *Massiah v. U.S.*, 377 U.S. 201 (1964). The court ruled that the defendant has a right to counsel during interrogation, after indictment, even if he or she is not in police custody. Court argued that the "surreptitious" interrogation by a government agent was clearly during a critical stage of the criminal prosecution.

**CASE 6:** *United States v. Ash*, 413 U.S. 300 (1973). The court ruled that no Sixth Amendment right to counsel existed at a photographic display conducted by the government to identify a suspect. This was not considered a critical stage of the criminal prosecution. Also, the defendant was not being confronted with a legal problem, and it was not part of the adversarial process.

**CASE 7:** *Moore v. Illinois*, 434 U.S. 220 (1977). The court ruled that a defendant has a right to counsel during a lineup after being formally charged. Court believed that the identification at the preliminary hearing was suggestive and that it took place during a critical stage of the criminal proceedings.

## **RIGHTS OF THE ACCUSED**

### **CASE STUDIES ON THE SIXTH AMENDMENT: THE RIGHT TO COUNSEL \_\_\_\_\_**

#### **Student Handout: COURT DECISIONS: YOU HAVE A RIGHT TO COUNSEL WHEN... cont.**

**CASE 8:** *Mempa v. Rhay*, 389 U.S. 128 (1967). The court ruled that you have a right to counsel at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected, such as sentencing.

**CASE 9:** *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). The court ruled that defendants do not have a right to counsel at a parole or probation revocation proceeding. Counsel could be provided at the state's discretion.

**CASE 10:** *Douglas v. California*, 372 U.S. 353 (1963). The court ruled that defendants do have a right to counsel at the first appeal when the appeal is a matter of legal right.

**CASE 11:** *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The court ruled that defendants do not have a right to counsel at post-conviction proceedings when the appeal is discretionary.

**CASE 12:** *Scott v. Illinois*, 440 U.S. 367 (1979). The court ruled that defendants do not have a right to counsel in misdemeanor cases if imprisonment is not imposed because the right to liberty is not being denied.

**CASE 13:** *Schmerber v. California*, 384 U.S. 757 (1966). The court ruled that defendants do not have a right to counsel before the police take a blood sample as part of a pre-charge criminal investigation. Investigation by the police is not a critical stage of the criminal proceedings.



**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL**

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**The Right to Counsel**  
by Gerald Rueckert and Art Hesse

The U. S. Constitution states, "*the accused shall enjoy the right to have the assistance of counsel for his defense.*" This phrase does not specify whether or not the accused will have counsel if he has no money to pay for one, nor does it state at what time during the accused's passage through the criminal justice system he has the right to counsel.

**Students will:**

1. Learn how the right to counsel, when charged with a crime, has evolved over the past 50 years.
2. Learn factors that bring about changes in Supreme Court decisions.

**Materials needed:**

Video Tape "*Gideons Trumpet*"

**OVERHEAD:** Court Decisions

Copies of: **Student Handout 1: Betts v. Brady**  
**Student Handout 2: Gideon v. Wainwright**  
**Student Handout 3: Escobedo v. Illinois**  
**Student Handout 4: Miranda v. Arizona**  
**Student Handout: TIME LINE**  
**Student Handout: HYPOTHETICAL CASE**

**Time needed:** 4 days

**Grade level:** 9th grade

**Procedure:**

**DAY 1**

1. Divide students into four small groups with each group assigned to one of the four Supreme Court Cases (**Student Handouts 1-4.**) Assign one student to act as the lawyer for the state and one student to act as the lawyer for the accused. Each lawyer will be given five minutes to present his/her side of the issue.
2. The remaining students will be given fifteen minutes to discuss and decide the issue as if they were the U. S. Supreme Court. They will answer the questions posed at the end of the case.

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

Procedure cont.

**DAY 2**

1. There will be a large group debriefing of the actual U. S. Supreme Court decisions (**OVERHEAD: Court Decisions**) shown on the overhead projector at which time the students will fill in the **Student Handout: TIME LINE** graph showing the step-by-step expansion of the right to counsel clause.

**DAY 2 & 3**

1. Show the video tape *"Gideon's Trumpet."*
2. The **Student Handout: HYPOTHETICAL CASE** will be passed out to each student at the end of day 3 for reading for discussion on Day 4.

**DAY 4**

1. Large group discussion of the **HYPOTHETICAL CASE**.

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

**Student Handout 1: *BETTS V. BRADY*, 316 U.S. 455 (1942)**

The accused, one Smith Betts, was indicted for robbery by the state of Maryland. He was an unemployed farm hand, without funds to pay for an attorney. His request for counsel was denied because local practice permitted appointment only in rape and murder cases. The court also noted that he was not helpless, but instead was a man, 43-years-old, of ordinary intelligence, who had once before been in criminal court. The state's case consisted of evidence identifying the accused as the robber. The defense was that the accused had witnesses to prove he was in another place at the time of the robbery. The simple issue was the truth of the testimony for the state or for the accused. After his request for a lawyer was denied, the accused chose to be tried without a jury. He decided not to appear as a witness himself. He was found guilty and sentenced to 8 years in prison.

**Group 1** is the Supreme Court of 1942. Your task is to decide if the judges refusal to provide a lawyer for Betts makes this trial unfair.

1. What specific part of the Bill of Rights is involved in this case?
2. Who is responsible for the defense of a poor person?
3. Can a person of normal intelligence defend himself in court?
4. Explain why Betts should or should not be given a new trial?

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

**Student Handout 2: *GIDEON V. WAINWRIGHT*, 372 U.S. 335 (1963)**

Clarence Gideon was charged in a Florida state court with breaking and entering a poolroom. A small amount of money was taken from a vending machine. Under Florida law, this offense was a felony. Gideon appeared in court claiming to be indigent and asked that counsel be appointed to represent him. The judge said he was not entitled to a lawyer because under Florida law the only time the court could appoint counsel to represent a defendant was when a capital offense had been charged.

Gideon represented himself as well as he could. He was found guilty and was sentenced to five years in prison. While in prison Gideon studied his constitutional rights in the prison library. He was convinced that his right to counsel had been violated. He wrote a handwritten letter on prison stationery to the United States Supreme Court asking that his case be considered.

**Group 2** is the Supreme Court of 1963. Your task is to decide if Gideon received a fair trial.

1. What specific part of the Bill of Rights is involved in this case?
2. Who is responsible for the defense of a person who claims to be indigent?
3. Can an average citizen provide adequate defense for himself in a court of law.
4. Explain why Gideon should or should not be given a new trial?

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL**

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**Student Handout 3: *ESCABEDO V. ILLINOIS*, 378 U.S. 478 (1964)**

On the night of January 19, 1960, the accused's brother-in-law was fatally shot. At 2:30 a.m. that morning, the accused was arrested without a warrant and questioned. The accused made no statement to the police and was released at 5:00 p.m. that afternoon. On January 30, Benedict DiGerlando, who was then in police custody and who was later indicted for the murder along with the accused, told police that the accused had fired the fatal shots. Between 8:00 and 9:00 p.m. that evening, the accused and his sister were arrested. On the way to the police station, the detectives told the accused that they *"had a witness who had named him as the one who had fired the gun and that he might as well admit to this crime."* The accused said, *"I am sorry but I would like to have the advice from my lawyer."*

Shortly after the accused arrived at police headquarters, his lawyer appeared. The police refused to let the accused speak to his lawyer. The accused repeatedly asked to speak to his lawyer but the police said his lawyer didn't want to see him. After confronting the accused with DiGerlando, the accused said, *"I didn't shoot Manuel, you did it."* After the admission of knowledge of the crime, the accused made further statements involving himself in the crime. At no time was the accused advised of his constitutional rights before or during the questioning. Under Illinois law, mere participation in the murder plot was legally as damaging as an admission of firing the fatal shot. (The *Gideon v. Wainwright* decision in 1963 requires the accused person be provided a lawyer when he is put on trial for a criminal offense.)

**Group 3** is the Supreme Court of 1964. Your task is to decide if Escobedo's trial was unfair because of his inability to confer with his lawyer when being questioned by the police.

1. What specific part of the Bill of Rights is involved in this case?
2. Why would it be helpful for the accused to have a lawyer present when he is questioned by the police?
3. Would it be harmful to the police to have a lawyer present when questioning an accused person?
4. Explain why Escobedo should or should not be given a new trial.



**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

**Student Handout 4: *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966)**

On March 13, 1963, Ernesto Miranda was arrested at his home and taken to a police station in Phoenix, Arizona. He was identified as the person who had raped a woman. He was interrogated for two hours by two police officers. He had not been advised of his right to have counsel present while being questioned. At the end of the two hour period, the police officers had a signed confession from Miranda stating that the confession was made voluntarily without threats or promises of immunity and "*with full knowledge of my legal rights, understanding that any statement made may be used against me.*" He was found guilty of kidnapping and murder. He appealed his case to the Arizona Supreme Court. This court held that his rights had not been violated in obtaining the conviction and upheld that conviction.

**Group 4** is the Supreme Court of 1966. Your task is to decide whether failure to notify Miranda of his rights violated the Constitution.

1. What specific part of the Bill of Rights is involved in this case?
2. Should an accused person be advised of their rights when being questioned?
3. Is it important to have legal counsel present while being questioned? Why?
4. Explain why Miranda should or should not be given a new trial?

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

**Student Handout: HYPOTHETICAL CASE**

Reginald Manybucks is 18 years old, white, and the son of a well respected wealthy family that has lived in the community for 125 years. Reginald just graduated from high school and has been accepted at Hamline University in St. Paul. In high school he was captain of the football team, played in the varsity band and participated in several other extracurricular activities including the student council.

Leroy Poorhouse is an 18-year-old, black male who is a newcomer to this community. He is unemployed and a high school dropout. Reginald and Leroy met at a recent party. When Reginald was leaving the party with 18-year-old Lusa Morales, whom he had just met, Leroy stopped him and asked for a ride home. The three teenagers left the party together. Lusa's body was found the next day. She had been shot with a 25 caliber gun. Reginald and Leroy were arrested and charged with her murder. Reginald and Leroy each own a 25 caliber gun.

Reginald's family can afford to hire the best lawyers available for his defense. They hire a private investigator to thoroughly investigate the case. They have a ballistics expert analyze Reginald's gun.

Leroy claims to be indigent and asks the court to provide the same assistance for his defense as Reginald's family has done for Reginald.

1. Should Leroy be granted the same assistance for his defense as Reginald?
2. What is meant by "*due process of the law*" in the 14th Amendment?

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

**OVERHEAD: Court Decisions**

***Betts v. Brady (1942)***

Betts was not helpless, but was a man 43-years-old, of ordinary intelligence and ability to take care of his own interests in the trial of the narrow issue of the truthfulness of his alibi that he was at another place at the time the robbery occurred. The right to appointment of a lawyer is **not** a basic right essential to a fair trial.

***Gideon v. Wainwright (1963)***

From the very beginning, our state and National Constitution and laws have placed great emphasis on safeguards designed to assure fair trials before impartial juries in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.

***Escobedo v. Illinois (1964)***

The Supreme Court held that the defendant needed the "*guiding hand of counsel*" to advise him of his rights and that the confession was unconstitutional.

***Miranda v. Arizona (1966)***

The court held that confessions obtained through custodial interrogation cannot be used in a trial unless the defendant was told of his right to remain silent and right to have an attorney.

**RIGHTS OF THE ACCUSED**  
**THE RIGHT TO COUNSEL** \_\_\_\_\_

**Student Handout: TIME LINE OF RIGHT TO COUNSEL**

1942

1963

1964

1966

## RIGHTS OF THE ACCUSED

### RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON* \_\_\_\_\_

**Right to Counsel: An Analysis of How the Right to an  
Attorney Expanded from *Betts v. Brady* (1942) to  
*Gideon v. Wainwright* (1963)  
by Deb Baarsch and Gerald Loudon**

#### Students will:

1. Explain the present interpretation of the Sixth Amendment right to counsel and its connection to the 14th Amendment due process application to the states established by the *Gideon v. Wainwright* case.
2. Identify key legal terms relevant to the study of the selected cases.
3. Understand that Supreme Court rulings can change over time.
4. Observe how the Supreme Court selects, hears, and decides its cases. (Contingent on viewing "*Gideon's Trumpet*").
5. Analyze an example of how one individual's initiative resulted in the expansion of a basic right for everyone.

**Materials needed:** Copies of:     **Student Handout: SIXTH & 14TH AMENDMENT  
AND LEGAL TERMS  
CASE SUMMARY *BETTS V. BRADY*  
Student Handout: *BETTS* Discussion Questions  
VIDEO TAPE "*Gideon's Trumpet*" (not included)  
AND     **Student Handout: GUIDED NOTETAKING STUDY  
QUESTIONS FOR "GIDEON'S TRUMPET"  
OR     CASE SUMMARY *GIDEON V. WAINWRIGHT*****

**Time needed:**     4-5 days

**Grade level:**     10th - 12th grades

#### Procedure:

1. Introduce the topic by handing out **Student Handout: SIXTH & 14TH AMENDMENT AND LEGAL TERMS** which will help students understand the two cases. Ask students to write the Sixth and 14th Amendments in their own words. Select examples from students to check for understanding. Ask students to give their opinions on the following issues:



## RIGHTS OF THE ACCUSED

### RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON* \_\_\_\_\_

#### Procedure cont.

- A. What circumstances must exist for the right to counsel to apply?
  - B. Do defendants have the right to an attorney in every case? Explain that this is an issue to look for when they read **CASE SUMMARY *BETTS* V. *BRADY***
  - C. What does the phrase "*due process*" mean?
  - D. What should an accused person have in order to ensure that the "process" he or she is "due" exists?
2. Distribute **CASE SUMMARY *BETTS* V. *BRADY***. Break students into small groups to answer the questions on **Student Handout: *BETTS* DISCUSSION QUESTIONS**. Each group should report their findings to the class with particular emphasis on the last four questions. Ask students whether they were surprised by the ruling of this case. Compare the students' initial opinions regarding the circumstances for the right to an attorney guarantee with the ruling in *Betts* v. *Brady*. Ask students the following:
  - A. Do you think that you would have the "*ordinary intelligence*" to defend yourself against charges brought by the state?
  - B. Would requiring you to defend yourself if you could not afford a lawyer be fair or just (due process)?
  - C. If you were a Supreme Court Justice, would you have voted with the Majority to rule that *Betts* was not denied due process when the Florida court refused to grant him an attorney on the basis of monetary need (since the Florida Constitution required counsel only in cases of capital offenses)? Take a poll of the student responses.
3. Students are now ready to either view the video tape "*Gideon's Trumpet*" (104 min.) and to take notes using **Student Handout: GUIDED NOTETAKING STUDY QUESTIONS FOR "GIDEON'S TRUMPET"** or read **CASE SUMMARY *GIDEON* V. *WAINWRIGHT*** if the video is not locally available. You may choose to have students read the **CASE SUMMARY** after viewing the video to clarify any questions that they have.
4. Have students work with a partner to compare notes from the video or discussion questions from the **CASE SUMMARY**. Tell them you are going to randomly select answers to the last question, "What did Gideon accomplish?" to read to the class.
5. Ask students to analyze as a class or in small groups the questions on **Student Handout: FOLLOW UP QUESTIONS TO *GIDEON* V. *WAINWRIGHT*** as a culminating activity.

## RIGHTS OF THE ACCUSED

### RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON* \_\_\_\_\_

Procedure cont.

**OPTIONAL ACTIVITY:** Divide the class into two and assign one side to prepare arguments to support the principle that individuals should have the right to counsel in all cases and the other side to defend the position that the right to counsel should be guaranteed only in cases of felonies. Allow students to debate.

After the debate you may tell students that the Supreme Court extended the Sixth Amendment right to counsel to misdemeanor cases in which imprisonment is imposed in 1972 in *Argersinger v. Hamlin*.

## RIGHTS OF THE ACCUSED

### RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON* \_\_\_\_\_

## Student Handout: SIXTH & 14TH AMENDMENTS AND LEGAL TERMS

### SIXTH AMENDMENT

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; or have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

### FOURTEENTH AMENDMENT - Sect. 1

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*

### Terms Related To The Cases

**Appeal :** to take a case to a higher court for review

**Defendant :** the person who is charged for an offense in a criminal action

**Prosecutor :** the public attorney who is handling the criminal proceedings on behalf of the people

**Petition :** a formal written request filed with a court which seeks action or relief

**Habeas Corpus:** request to bring a person (body) before a court; usually directed at whoever is detaining that person

**Certiorari :** an order by a higher court to a lower court to send them the certified record of the case to be reviewed

**Majority Opinion :** ruling of the higher court which is reviewing the case decided by a lower court (On the U.S. Supreme Court, a decision needs only five of the nine judges' votes to be valid.)

**Dissenting Opinion :** the arguments by a judge who disagrees with the decision of the majority

**Felony :** a crime that is more serious than a misdemeanor; usually punishment is imprisonment in excess of one year

## RIGHTS OF THE ACCUSED

### RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON*

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#### CASE SUMMARY: *BETTS* V. *BRADY*

Cite: 316 U.S. 455 (1942)

Smith Betts was a farm hand who was out of work and on relief when he was indicted for robbery in Carroll County, Maryland. At the time of his arraignment he informed the judge that due to a lack of money he was unable to hire counsel. He asked the judge to appoint an attorney for his defense. The judge denied his request stating that it was not the county's practice to provide counsel for indigent (anyone who lacks the means of support) defendants except in cases being prosecuted for murder or rape.

Betts pleaded not guilty and conducted his own defense before the judge after waiving his right to a jury trial. Although Betts attempted to establish an alibi, the judge found Betts guilty and sentenced him to eight years in prison. Betts filed a petition for a writ of habeas corpus to the Circuit Court of Maryland claiming that he had been deprived of his Sixth Amendment right to counsel as guaranteed by the due process clause of the 14th Amendment to the states. His case was heard but his claim was denied. He then sought a hearing before the Court of Appeals in Maryland where his case was also rejected.

When Betts petitioned the U.S. Supreme Court, they agreed to review his case. In a 6-3 decision, the Court held that the due process guarantee of the 14th Amendment did not obligate the states to provide counsel in every case in which the accused is unable to obtain counsel. Delivering the majority opinion, Justice Owen Roberts stated,

*"The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment although a denial by a state of the rights or privileges specifically embodied in that and others of the first eight Amendments may, in certain circumstances ... deprive a litigant of due process of law in violation of the Fourteenth ... denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial."*

The Court's majority found that Betts was a 43 year-old-man of "ordinary intelligence and ability" who had previous experience with the criminal courts through a prior conviction for larceny. Therefore, he was not handicapped in such a way to deny fundamental fairness guaranteed by the due process clause. Each case would have to be examined for special circumstances that infringed upon fundamental fairness before a judge would order the defendant to be provided with counsel. Betts did not meet the "*special circumstances*" test.

**RIGHTS OF THE ACCUSED**

**RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON*** \_\_\_\_\_

**Student Handout: *BETTS* DISCUSSION QUESTIONS**

1. What right did Betts claim that he was denied? What Amendments did he use to defend his claim?
2. What was the response of the lower court?
3. Under what "*special circumstances*" would the Sixth Amendment right to counsel be applied to the states according to the Supreme Court?
4. Who would make the decision of whether defendants fell into the "*special circumstances*" that would guarantee their Sixth Amendment right to counsel in serious cases (felonies)? Do you see any problems with how this decision regarding the circumstances is made?
5. Give an example of a person who would fit the ruling of the Supreme Court in *Betts v. Brady*.
6. Who might be discriminated against under this ruling?
7. Do you think the Supreme Court's decision was fair? Explain the reasons for your opinion.



## **RIGHTS OF THE ACCUSED**

### **RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON*** \_\_\_\_\_

#### **Student Handout: GUIDED NOTETAKING QUESTIONS FOR "*GIDEON'S TRUMPET*"**

1. Upon what evidence does the office arrest Clarence Gideon?
2. Why does Gideon come to trial without a lawyer?
3. What happens when he asks the court to appoint a lawyer? Why?
4. Describe Gideon's past criminal history.
5. What is the outcome of the trial?
6. What constitutional basis does Gideon find for his appeal to the Supreme Court?
7. What three things did Gideon need to do for his appeal?
8. What kind of special circumstances were needed for Gideon to have been appointed a lawyer under the existing court interpretation? Did Gideon fit any of those special circumstances.
9. Describe Gideon's life when he was young.
10. According to Abe Fortas, Gideon's attorney before the Supreme Court, what is the basic difficulty of *Betts v. Brady*?
11. Of the 7,800 convicts in prison in Florida at the time of this case, how many were estimated to have been tried without counsel?
12. What is the Supreme Court ruling in this case? What is the vote?
13. What is the next step for Gideon?
14. Give examples of how Gideon's defense improved with counsel.
15. What had Gideon accomplished?

## RIGHTS OF THE ACCUSED

### RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON*

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#### CASE SUMMARY OF *GIDEON V. WAINWRIGHT*

Cite: 372 U.S. 335 (1963)

Clarence Earl Gideon was charged with breaking into a poolroom in Bay Harbor, Florida with the intent to steal which was considered a felony by Florida law. While Gideon had performed odd jobs on occasion for the owner of this poolroom, he had no permanent employment and therefore lacked the funds to hire counsel for his defense. At his trial, Gideon asked the court to provide him with counsel due to lack of funds, but the judge denied his request on the basis that Florida law required counsel for defendants only in capital cases. Gideon pleaded not guilty and proceeded to defend his own case. The jury convicted him, and he was sentenced to five years in the state prison.

Convinced that he had been denied a right to counsel as guaranteed by the U.S. Constitution, Gideon researched the procedure required to appeal his case in the prison library. Preparing the petition for habeas corpus himself, Gideon appealed to the Supreme Court of the State of Florida to set aside his conviction. That court denied all relief.

Determined to pursue his rights, Gideon returned to the prison library to prepare his petition to the U.S. Supreme Court. Filing his petition in *forma pauperis* (as a pauper), Gideon fell under the federal law that allowed people too poor to pay the fee to bring the case to the Supreme Court. The Supreme Court granted certiorari and appointed a prestigious lawyer, Abe Fortas, to present Gideon's case.

In the decision that was unanimous, the Supreme Court ruled in favor of Gideon and overruled the *Betts v. Brady* decision that had held that the states need not apply the 14th Amendment due process requirement to the Sixth Amendment right to counsel in noncapital cases except in special circumstances. The Supreme Court referred to arguments by 22 states that had found the *Betts v. Brady* decision to be out of date. Writing the majority opinion, Justice Hugo Black stated that the Sixth Amendment guarantee of counsel was "*fundamental*" and "*essential*" to a fair trial and therefore must be made an obligation of the states by the 14th Amendment. He reasoned,

*"That government hires lawyers to prosecute and defendants who have money hire lawyers to defend are the strongest indications of the widespread belief that lawyers are necessities, not luxuries...From the very beginning, our state and national constitutions have laid great emphasis on procedural and substantive safeguards designed to assure ... every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."*

The Supreme Court then reversed the judgment against Gideon and sent his case back to the Florida Supreme Court. A new trial was ordered for Gideon in which he was appointed an attorney (this time the court even appointed the specific attorney requested by Gideon). Clarence Earl Gideon was acquitted in the very same Florida courtroom where he had first been convicted.

**RIGHTS OF THE ACCUSED**

**RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON*** \_\_\_\_\_

**CASE SUMMARY OF *GIDEON V. WAINWRIGHT* cont.**

**FOR DISCUSSION:** The *Gideon* decision only applied to felonies (serious crimes that carry the possibility of imprisonment). Looking at Justice Black's reasoning, do you think the Supreme Court would extend the right of counsel to misdemeanors at some point? In your opinion, what had Clarence Gideon accomplished?

**RIGHTS OF THE ACCUSED**

**RIGHT TO COUNSEL: AN ANALYSIS OF *BETTS* TO *GIDEON*** \_\_\_\_\_

**Student Handout: FOLLOW UP QUESTIONS TO *GIDEON V. WAINWRIGHT***

1. Why do you think that the Supreme Court changed its mind and recognized that Gideon had a right to an attorney?
2. Do you see any significance in the fact that the decision was unanimous?
3. Did the Supreme Court have to take the Gideon case?
4. Do you think the Supreme Court should change its rulings frequently?  
Why or why not?
5. Are some rights more important than others? Make a list of the rights that you think the Supreme Court should expect the states to enforce.
6. Do you think the right to counsel should apply to both misdemeanors and felonies or to just felonies as implied by the *Gideon* ruling?

## **RIGHTS OF THE ACCUSED**

### **TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM**

#### **To Be Confronted With The Witnesses Against Him** **by Charles Saxton**

In the activity that follows, students in small groups are asked to take on the role of Supreme Court Justices, deciding whether the right of the accused to confront the witnesses against him has been abridged or denied. A brief summary of the case and the arguments for and against the defendant's appeal are provided. All the cases are fictional. Each group is required to make a decision, write majority and minority opinions, and report their decision to the rest of the class.

Since each group is dealing with the same basic issue while the specifics of the cases differ, a report of the groups' decisions and a full class discussion is the culmination of this activity.

#### **Students will:**

1. Learn to apply the basic principles (in this case the right to confront witnesses) to specific situations.
2. Learn the role the court has in weighing the rights of the accused against the protection of society.
3. Practice writing a justification of their decision based on the principles spelled out in the Constitution.

**Materials Needed:** Copies of: **Student Handout: CASE STUDY 1**  
**Student Handout: CASE STUDY 2**  
**Student Handout: CASE STUDY 3**  
**Student Handout: CASE STUDY 4**  
**ARTICLE VI (See Appended Materials)**

**Time Needed:** 2-3 days (groups willing to thoroughly discuss the issues involved may take more time than this.)

**Grade Level:** 11th-12th grades



## RIGHTS OF THE ACCUSED

### TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM \_\_\_\_\_

#### Procedure:

1. Students should be made familiar with the rights of the accused as guaranteed in the Constitution.
2. Divide the class into groups. Since the Supreme Court has nine members, you may want to use groups of nine students and for classes of fewer than 36 use only some of the case studies provided. Or you may want to use smaller groups since historically the number on the Court has varied, but it is suggested that you use odd-numbered groups so that the chances of an evenly divided opinion are eliminated. For classes of more than 36 students, one case can be assigned to more than one group.
3. Hand out the xeroxed copies of **Student Handout: CASE STUDIES 1-4**. You may want to have copies of all cases available to all students since a class discussion will follow the small group decisions, but if xeroxing funds are limited, this is not essential.
4. Allow the students to read the specifics of the individual case to which they have been assigned.
5. Have the students meet in their groups and discuss their initial feelings about the cases and how the Constitution applies to their particular case.
6. When the students have reached an individual decision about the constitutionality of each case, have them poll their group to determine the court's decision.
7. When the group has voted and made its determination, those voting with the majority should confer to write a majority opinion explaining why they decided as they did, those voting in the minority opinion explaining why they feel the court has erred in its decision.
8. When all groups have voted (this may be done before or after the opinions are written), reconvene the entire class and have each group report its decision, allowing time to discuss the opinions and how they relate to one another. (See **TEACHER MATERIAL: Questions for Discussion.**)
9. When all written opinions have been handed in, publish or post the opinions of the court.

**RIGHTS OF THE ACCUSED  
TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM** \_\_\_\_\_

**TEACHER MATERIAL**

**??? QUESTIONS FOR DISCUSSION ???**

1. How did the rights of the accused to confront the witnesses against him (her) compare in each of these cases?
2. In which case was the accused's right to confront witnesses most severely restricted or denied?
3. Is this an important right? Why is it a part of the Bill of Rights?
4. Did the severity of the crime weigh in your decision as to whether or not the accused's rights had been violated? Should the severity of the crime be part of the consideration of the Justices?
5. In each of these cases a jury had found the individual guilty, yet in our system someone accused of a crime is said to be *innocent until proven guilty*. As a Justice in a case under appeal, did you consider these individuals guilty or innocent when they came before you? Should guilt or innocence be a consideration when a Constitutional question is involved?

**ADDITIONAL RESOURCES**

Some cases involving the right to confront witnesses that you may want to examine or have available to your students as they deliberate on these questions are:

*Coy v. Iowa*, 108 SCt. 2798 (1988)  
*Larson v. Minnesota*, 111 SCt. 29 (1990)  
*U.S. v. Inadi*, 106 SCt. 1121 (1986)

**NOTE TO TEACHERS**

The case studies are all hypothetical, but they were designed to address real issues. They were also designed so that the most complete denial of the right to confront witnesses occurs in the most serious offense. This was done so that in the full class discussion the clash between the accused's right to due process and the society's right to protect itself come into clear conflict.

## RIGHTS OF THE ACCUSED

### TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM

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#### Student Handout: CASE STUDY 1

A series of garage fires were set destroying buildings and the contents of the garages. Gus Roebottom was arrested and convicted of arson. From her window, Ava Turner was an eyewitness to the last fire. Ms. Turner suffers from agoraphobia and has not left her house in over 35 years. In order to accommodate Ms. Turner's condition, the court allowed the prosecuting attorney and the defense attorney to cross-examine her in her home. The questions and responses were videotaped, and the tape was played for the jury. On the strength of Ms. Turner's testimony, the jury found Mr. Roebottom guilty of arson, and he was sentenced to 10 years in prison.

Mr. Roebottom then appealed the case to the State Supreme Court, but they upheld the conviction. The appeal has now reached you-The Supreme Court of the United States. Based on what you know of the 6th Amendment to the Constitution and its application to this case, you must decide whether to *uphold his conviction or overturn it and order a new trial*.

Mr. Roebottom's attorney has argued that the 6th Amendment's guarantee of his right to confront the witnesses against him has been violated because he was not present at the videotaping in Ms. Turner's home, and she did not appear in court. Because of this violation of his rights under the 6th Amendment, his conviction should be thrown out and a new trial ordered.

The attorney for the state has argued that because Mr. Roebottom's attorney had the opportunity to cross-examine Ms. Turner, this fulfilled the constitutional requirement that the accused have the right to confront the witnesses against him. Actual face-to-face confrontation in court was not required. Ms. Turner's psychiatrist has testified that she would be unable to function outside the security of her home. Furthermore, because she was the only eyewitness to the crime, without her testimony the state would have had insufficient evidence to bring Mr. Roebottom to trial. If Ms. Turner had appeared in court, Mr. Roebottom would have had no active role in questioning her; he was in court to view the videotape; his attorney had the opportunity to question Ms. Turner on his behalf. Therefore, his appeal should be denied.

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#### YOUR DECISION

**Grant** his appeal, and give him a new trial

**or**

**Deny** his appeal, and uphold his conviction

**RIGHTS OF THE ACCUSED  
TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM**

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**Student Handout: CASE STUDY 2**

Silvia Libertini and her former boyfriend were arrested for smuggling cocaine into the United States. Following their arrest, her boyfriend Albert Solomon was granted immunity in return for his testimony against Ms. Libertini. Mr. Solomon testified in court about Ms. Libertini's involvement with the drug smuggling, but before he could be cross-examined by Ms. Libertini's attorney, he fled the country, and efforts to return him have been unsuccessful. The judge in the case instructed the jury to ignore Mr. Solomon's testimony and continued with the trial. Mr. Libertini was found guilty and sentenced to 25 years in prison.

Ms. Libertini's attorney appealed the case to the Federal District Court of Appeals who upheld the conviction. She then appealed the case to you-the Supreme Court of the United States. Based on your interpretation of the 6th Amendment and its application to this case, you must decide whether to *uphold her conviction* or *overturn it* and *order a new trial*.

The appellant's attorney has argued that since Mr. Solomon was allowed to testify against Ms. Libertini, but her attorney had no opportunity to cross-examine this witness, her right to confront the witness against her was abridged. At this point the judge should have ruled a mistrial and had a new jury impaneled. Although the jury was instructed to ignore Mr. Solomon's testimony, Ms. Libertini's attorney has argued that this is for all practical purposes impossible. Therefore, she asks that the conviction be overturned and a new trial ordered.

The attorney for the state has argued that the judge acted correctly in instructing the jury to ignore Mr. Solomon's testimony, that the state made every effort to have Mr. Solomon returned for testimony, that there was other evidence in addition to Mr. Solomon's testimony, and that a new trial would have involved additional time and expense. A new trial without Mr. Solomon's testimony would have put the state at a distinct disadvantage. Mr. Solomon was granted immunity originally because it was believed that he had played a small role in the drug smuggling and that the information he would provide would be important in obtaining a conviction against Ms. Libertini. Therefore, a new trial without his testimony would likely have the effect of setting Ms. Libertini free. To avoid this, he is asking that the court deny her appeal and uphold the conviction.

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**YOUR DECISION**

**Grant** her appeal, and give her a new trial

**or**

**Deny** her appeal, and uphold her conviction



## RIGHTS OF THE ACCUSED

### TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM

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#### Student Handout: CASE STUDY 3

Omar Rahjiv owned a prized and valuable stamp collection. He alleged that it was stolen from him by his cleaning woman Francis Fonda. Mr. Rahjiv testified in court as to his suspicions about Ms. Fonda and his reasons for those suspicions. The court adjourned before Ms. Fonda's attorney could cross-examine him. During the night Mr. Rahjiv had a stroke. The trial was suspended until he was able to return to testify, but on his return he had lost the ability to speak or write. He was allowed to respond to cross-examination by nodding his head. At the conclusion of the trial, the jury found Ms. Fonda guilty of stealing the stamp collection, and she was sentenced to seven years in prison.

Ms. Fonda appealed her conviction to the state supreme court which upheld the guilty verdict. She then appealed the case to you-the United States Supreme Court. Based on your interpretation of the 6th Amendment and its application to this case, you must decide whether to *uphold her conviction or overturn it and order a new trial.*

Ms. Fonda's attorney has argued that the restrictions placed upon her in her cross-examination of Mr. Rahjiv in effect denied her the right to confront the witness against her. While the prosecuting attorney had the opportunity to allow Mr. Rahjiv to elaborate in his own words about the details of the case, she could obtain only "yes" or "no" responses from him on cross-examination. While the judge suspended the trial, Ms. Fonda's attorney argues that a mistrial should have been ruled and a new trial ordered at which time both attorneys would have obtained testimony from Mr. Rahjiv under the same conditions. Since this was not done, Ms. Fonda's attorney is asking you to overturn her conviction and order a new trial to ensure that Ms. Fonda is tried receiving all the rights guaranteed to her by the 6th Amendment to the Constitution.

The attorney for the state has argued that the trial was conducted in good faith. The judge did all he could to ensure that Ms. Fonda received a fair trial. Under the circumstances, no more could have been expected. To rule a mistrial and begin the trial anew would have involved additional time and taxpayer expense. Because Ms. Fonda was present in court when Mr. Rahjiv gave his testimony, and since her lawyer had the opportunity to cross-examine Mr. Rahjiv, the state has provided to Ms. Fonda all the protections guaranteed her under the 6th Amendment and therefore she has no grounds on which to appeal her conviction. It should be upheld.

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#### YOUR DECISION

**Grant** her appeal, and give her a new trial

**or**

**Deny** her appeal, and uphold her conviction



## RIGHTS OF THE ACCUSED

### TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM \_\_\_\_\_

#### Student Handout: CASE STUDY 4

A series of brutal murders had taken place, but police had few leads and no witnesses. Then in the most recent murder, police found a four-year-old boy hidden in a closet at the murder scene. The boy was able to identify an individual in a police photo as the killer of his mother, but he was so traumatized by witnessing the brutal murder that the judge allowed him, for his own protection, to tell his story on videotape and had the tape played in court. Based on the boy's story, Sed Thurman was found guilty of murder and sentenced to be executed.

Mr. Thurman's attorney appealed the case to the state Supreme Court of his state which upheld the conviction. The case was then appealed to you-the Supreme Court of the United States. Based on your interpretation of the 6th Amendment and its application to this case, you must decide whether to *uphold the conviction or overturn it and order a new trial*.

Mr. Thurman's attorney has argued that the 6th Amendment expressly guarantees anyone accused of a crime the right to confront the witnesses against him. Since the boy was the only witness in the case, and since he neither appeared in court nor was available for cross-examination, Mr. Thurman was denied an essential right of the accused. Because of this, Mr. Thurman's trial and conviction were unconstitutional, lacking the essential fairness and justice that our system is supposed to provide. Therefore the finding of the court should be overturned and Mr. Thurman should receive a new trial.

The attorney for the state has argued that the testimony of the boy is essential to convince the jury of Mr. Thurman's guilt, but that the boy had already experienced such severe trauma in witnessing the murder, that to force him to appear in court, to confront Mr. Thurman, and to have to answer questions from Mr. Thurman's attorney would have been overly cruel on the part of the state. Furthermore, it is in the interest of the society to remove from its midst the kind of people who perpetrate these heinous crimes, and so the court must be flexible in its interpretation of the rights of those accused of these crimes. If Mr. Thurman's rights were restricted, such a restriction was necessary to bring the man who committed these brutal murders to justice. To order a new trial would mean either trying Mr. Thurman without the boy's testimony or forcing the boy to endure the ordeal of a trial, forcing him to relive the horrors of his mother's murder. Therefore the court should uphold his conviction and allow the state to carry out its sentence.

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#### YOUR DECISION

**Grant** the appeal, and give him a new trial

**or**

**Deny** the appeal, and uphold his conviction

**The Final Question**  
by Katy Costello

**Students will:**

1. Develop opinions on a controversial issue.
2. View and appreciate both sides of a controversial issue.
3. Understand the Eighth Amendment.
4. Understand the effects of the death penalty.
5. Demonstrate how to map states.
6. Understand symbols and what they represent.
7. Learn to work in groups.
8. Understand how to read a chart and apply the information.
9. Know the historical development of the death penalty in the United States.

**Materials needed:** Copies of: **EIGHTH AMENDMENT** (See Appended Materials)  
**Student Handout 1: PERSONAL JOURNAL**  
**Student Handout 2: VOCABULARY**  
**Student Handout 3: THE FINAL QUESTION**  
**Student Handout 4: CRUEL AND UNUSUAL?**  
**Student Handout 5: CONSTITUTIONALLY CRUEL AND UNUSUAL?**  
**Student Handout 6: MAPPING THE DEATH PENALTY**  
**Student Handout 7: WHO DOES WHAT**  
**Student Handout 8: WEIGHING THE DEATH PENALTY**  
**Student Handout 9: YOU DECIDE**  
Chalkboard, chalk, eraser or transparencies & overhead  
Dictionaries

**Time needed:** 1 week

**Grade level:** 7th - 12th grades

## RIGHTS OF THE ACCUSED

### THE FINAL QUESTION

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#### Procedure:

#### Activity 1: Personal Journal

1. Before students can proceed to investigate, analyze and summarize the concept of capital punishment and understand the current status of capital punishment in American today, they must first consider their own feelings and opinions about the death penalty.

This particular activity may seem simplistic, but it will help students sort out their attitudes toward the issues of capital punishment.

Give copies of **Student Handout 1: PERSONAL JOURNAL** to students and have each person answer questions 1-4. After students have completed **Student Handout 1**, move to the Brainstorming stage.

2. **BRAINSTORMING:**

Ask students to share the lists they made in question 1 of **Student Handout 1** out loud and write them on a chalkboard. Discuss any patterns or repetitive answers.

Next, ask students to share their answers from question #2. Again, note any common threads and/or parallel ideas. Opinions will start to vary. Try to engage the students in a debate.

Finally, ask students to read their opinions out loud and explain their reasoning. Before **anyone** states his/her opinion, remind the students that everyone is entitled to his/her own opinion to and the courtesy of others. This may help reduce the urge to enter into a debate as **this is a very controversial topic**.

#### Activity 2: Vocabulary

1. Since many of the terms used in this unit may be new to students, a vocabulary list will be helpful for reference. Distribute a copy of **Student Handout 2: VOCABULARY** to each student to complete and refer to in the next lesson ahead.

#### Activity 3: The Final Question

1. Hand out copies of **Student Handout 3: THE FINAL QUESTION**. Have students read individually, in small groups, or as a class. Discuss the information in the reading. Have students keep this reading close by throughout the unit because the future activities refer to information found in the article.

## RIGHTS OF THE ACCUSED

### THE FINAL QUESTION

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Procedure cont.

#### Activity 4: Cruel and Unusual?

1. Give each student a copy of **Student Handout 4: CRUEL AND UNUSUAL?**
2. After students have completed the **Student Handout 4**, have them form small groups of 3-4. Each group will be asked to decide on and try to agree which five punishments are cruelest. (**Number one** will represent the **most severe** in cruelty). Then ask each group to decide, from the list which five punishments are least cruel. (**Number 24** will represent the **least severe** in cruelty.)
3. The lists of the most and least severe punishments will be shared with the whole class, with one person from each group acting as a spokesperson for their group.
4. Write the group's decisions on the board. Discuss the patterns and common answers, if any.
5. Finally, develop a definition of *cruel and unusual* from the decisions made by each group. Have students add this class definition to their vocabulary list (**Student Handout 2**.)

#### Activity 5: Constitutionally Cruel and Unusual?

1. Give each student a copy of **Student Handout 5: CONSTITUTIONALLY CRUEL AND UNUSUAL?**
2. After students have completed **Student Handout 5**, have them form small groups of 3-4. Each group should be asked to decide which punishments would be constitutional, giving their reasons. Keep in mind the words of the Eighth Amendment. (You may want to distribute copies of **Student Handout: EIGHTH AMENDMENT** or copies of the U.S. Constitution and Bill of Rights.) Also, students should note their group decisions.
3. As a class, brainstorm and write on the chalkboard the punishments that would be acceptable in our society today in accordance with our Constitution.

## RIGHTS OF THE ACCUSED

### THE FINAL QUESTION

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Procedure cont.

#### Activity 6: Mapping the Death Penalty

There are currently 37 states in the United States that have the death penalty. The different types of executions vary from the primitive hanging and firing squad to the most contemporary means of death, the lethal injection. The lethal injection was introduced in 1977.

In this activity, students will be practicing their geographic skills while learning about the death penalty.

1. Give each student a copy of **Student Handout 6: MAPPING THE DEATH PENALTY**. Next, hand out a copy of **Student Handout 7: WHO DOES WHAT**, which identifies each state and its type(s) of death penalty. Some states do not have the death penalty.

Note the symbols at the top of the chart and on the map which represent the types of death penalties used in the United States.

2. After each student has a copy of the **Student Handouts 6 and 7**, have students identify each state on the map by writing the appropriate state name.

3. Next, have students draw in the symbol(s) of the type(s) of death penalty used in each state according to the chart. Students should shade in the states without the death penalty.

4. Finally, the states on the chart that are marked by an asterisk (\*) are members of what is called "**death belt**." These nine states account for 90 percent of the nation's executions. Have students group these nine states together by drawing a thick, dark line around the states as a group.

5. After the map work is completed, time should be taken to discuss the findings of this activity. Some questions which should be addressed are:

- A. What area of the U.S. generally does not support the death penalty?
- B. Why do you suppose it isn't supported there?
- C. Why do the southeastern states account for 90% of the nation's executions?
- D. Are any of the death penalties used in the U.S. today in violation of the Eighth Amendment in your opinion?
- E. Other questions will no doubt be raised by your students.



## **RIGHTS OF THE ACCUSED**

### **THE FINAL QUESTION**

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Procedure cont.

#### **Activity 7: Weighing the Death Penalty**

Capital punishment is a very controversial issue. Some people are in complete favor of it, while others completely oppose it. There is another group of people who are unsure of their feelings on this issue, and a group that would favor capital punishment in only specific cases.

Whatever each person's opinion, it is to his/her advantage to look at and consider the many sides of this issue.

1. Distribute **Student Handout 8: WEIGHING THE DEATH PENALTY**. This activity asks students to form small groups of 3-4. The students are asked to come up with 4-5 pros and cons regarding the death penalty.

2. After the students have a list of arguments, these should be shared with the whole class and discussed so that all sides of the issue can be presented and appreciated.

#### **Activity 8: YOU DECIDE**

This activity puts the students in the role of sentencing a person found guilty of some type of murder or murders.

1. Distribute **Student Handout: YOU DECIDE**. In small groups, have the students decide the fate of each of the accused criminals.

2. Have the students share and discuss their decisions when everyone has completed all 10 cases. As a class, note the different opinions in sentencing. As a class, try to identify the characteristics that establish the differences between the decision to sentence a person to the death penalty as opposed to sentencing a person to life imprisonment.

Ask students to explain their reasoning and state the alternative opinions he/she designed in the **Student Handout 9**.

**RIGHTS OF THE ACCUSED**

**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout 1: PERSONAL JOURNAL**

**The Death Penalty**

1. Write down 10 things that come to your mind when you are confronted with the words, *the death penalty*.

- |    |     |
|----|-----|
| 1. | 6.  |
| 2. | 7.  |
| 3. | 8.  |
| 4. | 9.  |
| 5. | 10. |

2. Who, if anyone, do you think should be sentenced to the death penalty? (Be more specific than "criminals".)

3. Write a brief statement **stating** your feelings toward the issue of capital punishment. (If you support it in only certain cases, state in which situations you would support the death penalty.)

4. Finally, explain your reasons behind the statement you wrote in Question 2.

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout 2: VOCABULARY**

**DEFINE THE FOLLOWING TERMS ACCORDING TO THEIR LEGAL USE.**

Death Penalty

Capital Punishment

Lethal Injection

Gassing

Hanging

Firing Squad

Appeal

Habeas Corpus

Death Row

Electrocution

Crucifixion

Castration

Ducking Stool

Stocks

Pillory

Banishment

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout 2: VOCABULARY cont.**

Mitigating Circumstances

Aggravating Circumstances

Victim

Verdict

Sentence

Cruel

Unusual

Retribution

Exile

Deterrence

Excessive

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION**

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**Student Handout 3: THE FINAL QUESTION**

It has been 15 years since the decision was made. It has been 15 years of continual debate between supporters and opponents. It has been 15 years of wrestling between whether it's right or it's wrong. It has been 15 years of legal arguments, mental anguish, anger, heartache, frustration, and confusion. It has been 15 years since the Supreme Court reinstated the death penalty in America. Notice the key word in the previous sentence, *reinstated*. The decision made by the Supreme Court in 1976 to allow for a death penalty to be implemented by the states, at their discretion, was not the first time the death penalty was found constitutional in the United States.

Before we can address the death penalty, we must first consider the amendment to the Constitution which allows for this action. The Eighth Amendment to our federal Constitution states:

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

It is this amendment which deals with and helps regulate the sentencing of criminals in the United States today and has done so since the Eighth Amendment was adopted through the Bill of Rights in 1791.

Before our country had a federal constitution, the citizens of this land had to deal with the issue of punishment for criminals. In the Puritan era, the people had to deal with such crimes as gambling, swearing, robbery, lying and spouse beating. The punishments inflicted for such crimes ranged from fines to whippings to ducking. Ducking was, essentially, the dipping of a person into water. The person in question would sit in a chair built on the end of a long horizontal pole. The chair was then lowered into the water with the person sitting in the chair. The Puritan's also used public humiliation as a means of punishment. Some criminals were placed in stocks or the pillory. Additional humiliation tactics used were to make the criminal wear letters signifying the crime he/she had committed.

When the question of criminal execution was presented to the Puritans, hanging was the answer. Some states in the United States still have hanging as an option for the death penalty. Another, earlier, death penalty practice, which is still an option in a limited number of states, was the firing squad. Since these primitive means of capital punishment were used, many new ones have been invented. Death by electrocution was introduced in 1890. Thirty-four years later, in 1924, the gas chamber became an option in the death penalty, and in 1977, lethal injection was introduced.

In 1972, our Supreme Court stopped just short of saying that the death penalty was cruel and unusual in the case of *Crocker v. Georgia*. Then, in 1976, the Supreme Court authorized the death penalty in the case of *Gregg v. California*.

Since the Supreme Court raised its moratorium on executions in 1976, there have been 128 people who have actually died via the death penalty while on death row. (This figure includes executions from 1976 to May 1990). Over the 15 years since the death penalty was



## RIGHTS OF THE ACCUSED

### THE FINAL QUESTION

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#### Student Handout 3: THE FINAL QUESTION cont.

reinstated, the average executions via the death penalty per year was less than 10 per year. Just take a look at the mathematics involved here. There have been roughly 265,000 murders reported from 1976-1990. If that number, 265,000, is divided by the number of executions during that same period, the result is that 2,137 murders have been committed for each execution completed.

Our death row population is almost 2500 people. In 1989 alone, 300 convicts were sent to death row; 16 were executed that year. Why are so many sentenced but so few executed? The answer lies in the appeals process. When the judicial personnel are dealing with taking someone's life, they are very careful that there is no miscarriage of justice. In the last 19 years, at least 27 people who were facing the death penalty were later found not guilty by a higher court. Randall Dale Adams is probably the most publicized person to be found innocent of his crime. Adams had spent 12 years on death row in Texas for murdering a police officer. While making the movie, *The Thin Blue Line*, a filmmaker found evidence which proved Adams's innocence. Between 1900-1985, some 23 Americans died via the death penalty for crimes they didn't commit. Our justice system tries to be certain of a person's guilt before he/she is sentenced to death.

The process before the death penalty is carried out is long. Again, this is due to our appeals process. The average length of the appeals process is eight years. These are a very expensive eight years. When the costs of legal fees, housing, hiring of an executioner, upkeep, etc., are considered, it costs tax payers between 1.6 - 3.2 million dollars to carry out ONE death penalty. On the other hand, it costs roughly \$38,000 per year for each person in our prison system. A 1991 Supreme Court decision limited the number of appeals in federal criminal cases. Many states are also limiting their number of appeals to help deal with the court's backlog and to quiet society's anger while still providing for the rights of the accused.

In 1972, 52 percent of our American population favored the death penalty. In 1990, that figure had grown to 75 percent. Many people believe, however, that there is still not enough political will to initiate a series of executions. There seems to be a growing trend of anger across the United States. People are tired of the court's hesitancy to use the death penalty. They see more violent crimes being committed and reported, and they feel that justice is not being done. Proponents of the death penalty view capital punishment as a deterrent to crime. If the death penalty does not deter the criminal before he/she acts, he/she won't ever do it again! The death penalty, here, is seen as a permanent deterrent and as just.

Opponents to the death penalty do not view it as a deterrent. People against the death penalty cite Portugal, Denmark, Nicaragua, Norway, France, Netherlands, Australia, Philippines, East Germany, Cambodia, New Zealand, Romania and Namibia as all abolishing the death penalty since 1976, leaving the U.S. as the only country in the Western world to execute its citizens. In many countries, the death penalty, here, is seen as a violation of human rights.

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout 3: THE FINAL QUESTION cont.**

In 1989, the Supreme Court ruled in *Penry v. Lynaugh* that the sentencing of a mentally retarded person to death due to a murder conviction does not violate the Eighth Amendment. We are one of the few countries that allows for the execution of juveniles as well.

The death penalty conjures up scary pictures of electric chairs, dark gas chambers, and needles filled with lethal drugs. Capital punishment also brings up two opposite views. One, *"Justice cannot be served as long as we practice and okay a death sentence."* Two, *"Justice has been served because this criminal has been eliminated from society."*

Where do you fall in the spectrum dealing with, The Final Question?

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION**

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**Student Handout 4: CRUEL AND UNUSUAL?**

The following is a partial list of punishments imposed on American society since the pre-Puritan times. Many of the punishments listed are no longer used today. Some of the punishments listed have never been imposed but could potentially be implemented.

The attitude of the American people seems to be changing. Currently more than 75 percent of the United States population supports the death penalty. This figure compares to 57 percent in 1972. The support for the death penalty is increasing.

**Assuming your state allows for the death penalty.....You Decide....**

Which of the following punishments do you find *cruel and unusual*? If you would support the punishment in certain cases, identify your conditions.

Next, number the punishments from 1-24 in order of **most cruel (1) to least cruel (24)** using only the punishments listed below.

|                     | Number | Cruel & Unusual | Not Cruel & Unusual | Undecided | Support in Specific Cases |
|---------------------|--------|-----------------|---------------------|-----------|---------------------------|
| Crucifixion         |        |                 |                     |           |                           |
| Burned at stake     |        |                 |                     |           |                           |
| Cut off limbs       |        |                 |                     |           |                           |
| 40 lashes with whip |        |                 |                     |           |                           |
| Castration          |        |                 |                     |           |                           |
| Ducking stool       |        |                 |                     |           |                           |
| Public shaming      |        |                 |                     |           |                           |
| Stocks              |        |                 |                     |           |                           |
| Pillory             |        |                 |                     |           |                           |
| Imprisonment        |        |                 |                     |           |                           |
| Cut out tongue      |        |                 |                     |           |                           |
| Breaking bones      |        |                 |                     |           |                           |

**RIGHTS OF THE ACCUSED****THE FINAL QUESTION** \_\_\_\_\_**Student Handout 4: CRUEL AND UNUSUAL? cont.**

Number the punishments from 1-24 in order of **most cruel (1)** to **least cruel (24)** using only the punishments listed below.

|                                   | Number | Cruel & Unusual | Not Cruel & Unusual | Undecided | Support in Specific Cases |
|-----------------------------------|--------|-----------------|---------------------|-----------|---------------------------|
| Electrocution                     |        |                 |                     |           |                           |
| Cut off ears                      |        |                 |                     |           |                           |
| Pierce tongue with hot iron       |        |                 |                     |           |                           |
| Wear sign stating crime committed |        |                 |                     |           |                           |
| Branding                          |        |                 |                     |           |                           |
| Hanging                           |        |                 |                     |           |                           |
| Banishment                        |        |                 |                     |           |                           |
| Exile                             |        |                 |                     |           |                           |
| Stoning                           |        |                 |                     |           |                           |

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout 5: CONSTITUTIONALLY CRUEL AND UNUSUAL?**

Check which punishments our federal Constitution would deem as *cruel and unusual*.

| Punishment          | Cruel & Unusual<br>(constitutionally unacceptable) | Not Cruel & Unusual<br>(constitutionally acceptable) |
|---------------------|----------------------------------------------------|------------------------------------------------------|
| Crucifixion         |                                                    |                                                      |
| Burned at stake     |                                                    |                                                      |
| Cut off limbs       |                                                    |                                                      |
| 40 lashes with whip |                                                    |                                                      |
| Castration          |                                                    |                                                      |
| Ducking stool       |                                                    |                                                      |
| Public shaming      |                                                    |                                                      |
| Stocks              |                                                    |                                                      |
| Pillory             |                                                    |                                                      |
| Imprisonment        |                                                    |                                                      |
| Cut out tongue      |                                                    |                                                      |
| Breaking bones      |                                                    |                                                      |
| Lethal injection    |                                                    |                                                      |
| Gassing             |                                                    |                                                      |
| Firing squad        |                                                    |                                                      |
| Electrocution       |                                                    |                                                      |
| Cut off ears        |                                                    |                                                      |



**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout 5: Constitutionally Cruel and Unusual? cont.**

Check which punishments our federal Constitution would deem as *cruel and unusual*.

| Punishment                        | Cruel & Unusual<br>(constitutionally unacceptable) | Not Cruel & Unusual<br>(constitutionall acceptable) |
|-----------------------------------|----------------------------------------------------|-----------------------------------------------------|
| Pierce tongue with hot iron       |                                                    |                                                     |
| Wear sign stating crime committed |                                                    |                                                     |
| Branding                          |                                                    |                                                     |
| Hanging                           |                                                    |                                                     |
| Banishment                        |                                                    |                                                     |
| Exile                             |                                                    |                                                     |
| Stoning                           |                                                    |                                                     |

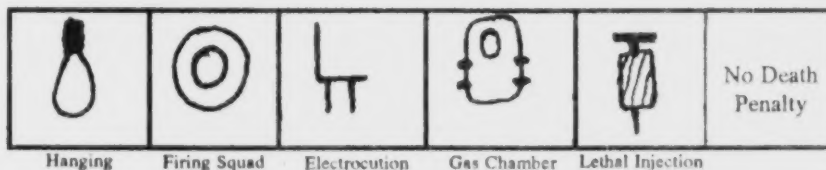
## RIGHTS OF THE ACCUSED

### THE FINAL QUESTION \_\_\_\_\_

#### Student Handout 6: MAPPING THE DEATH PENALTY

##### DIRECTIONS:

1. Identify each state by name.
2. In each state, draw in the symbol(s) representing what kind of death penalty each state has.

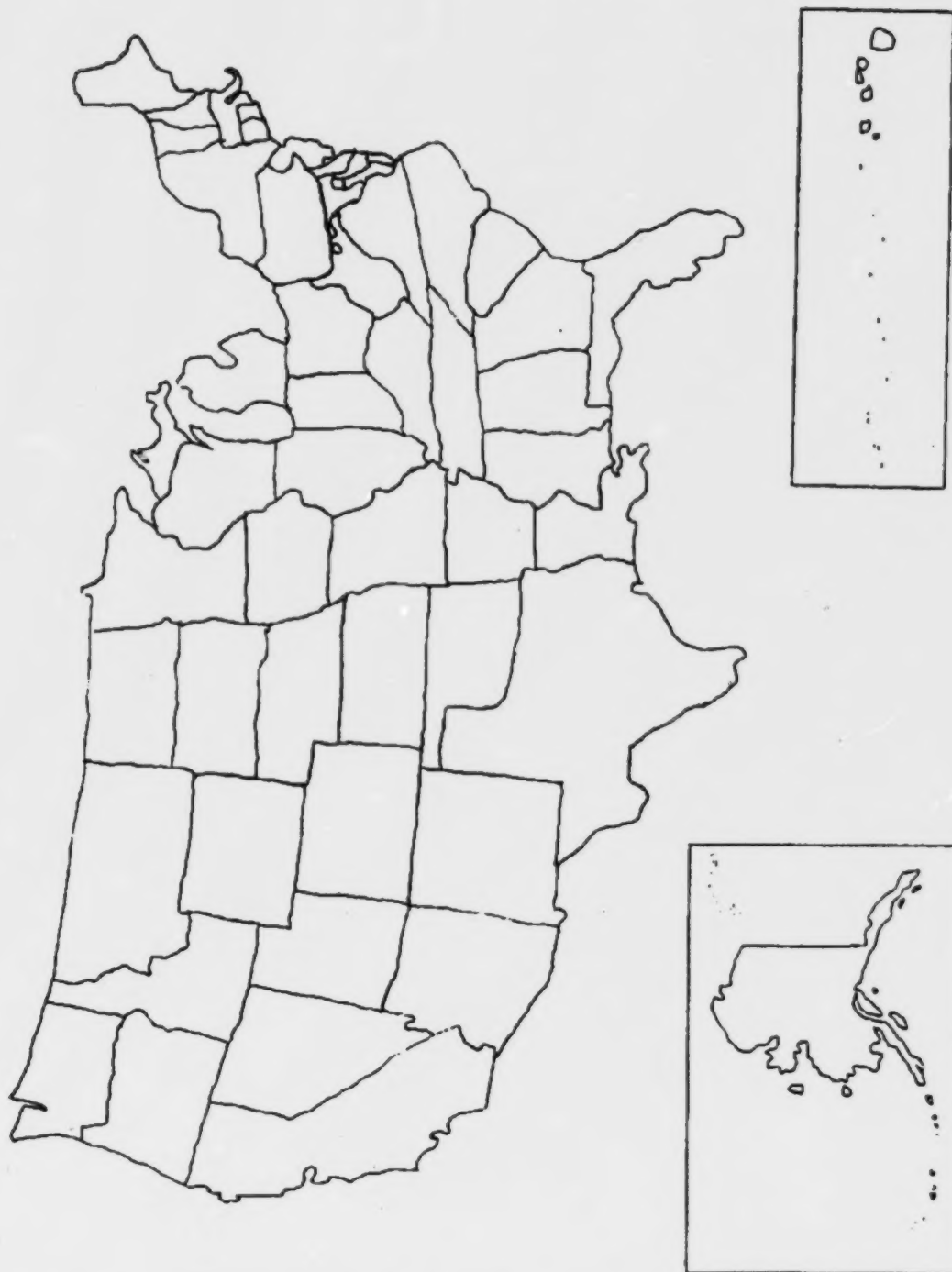


3. Shade in the states *without* the death penalty.
4. The states on the chart that are marked by the astrick (\*) are members of the "death belt." Group these nine states together by drawing a thick, dark line around the states as a group.

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION**

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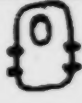
**Student Handout: MAPPING THE DEATH PENALTY cont.**



# RIGHTS OF THE ACCUSED

## THE FINAL QUESTION

### Student Handout 7: WHO HAS WHAT

|                 |  |  |  |  |  | No Death Penalty |
|-----------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------|
|                 | Hanging                                                                           | Firing Squad                                                                      | Electrocution                                                                     | Gas Chamber                                                                        | Lethal Injection                                                                    |                  |
| Alabama (*)     |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Alaska          |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Arizona         |                                                                                   |                                                                                   |                                                                                   | X                                                                                  |                                                                                     |                  |
| Arkansas        |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| California      |                                                                                   |                                                                                   |                                                                                   | X                                                                                  |                                                                                     |                  |
| Colorado        |                                                                                   |                                                                                   |                                                                                   | X                                                                                  |                                                                                     |                  |
| Connecticut     |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Delaware        | X                                                                                 |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Florida (*)     |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Georgia (*)     |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Hawaii          |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Idaho           |                                                                                   | X                                                                                 |                                                                                   |                                                                                    | X                                                                                   |                  |
| Illinois        |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Indiana         |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Iowa            |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Kansas          |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Kentucky        |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Louisiana (*)   |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Maine           |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Maryland        |                                                                                   |                                                                                   |                                                                                   | X                                                                                  |                                                                                     |                  |
| Massachusetts   |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Michigan        |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Minnesota       |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Mississippi (*) |                                                                                   |                                                                                   | X                                                                                 | X                                                                                  |                                                                                     |                  |
| Missouri        |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Montana         |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Nebraska        |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Nevada          |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| New Hampshire   | X                                                                                 |                                                                                   |                                                                                   |                                                                                    |                                                                                     |                  |

# RIGHTS OF THE ACCUSED

## THE FINAL QUESTION

### Student Handout 7: WHO HAS WHAT cont.

|                    |  |  |  |  |  | No Death Penalty |
|--------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------|
|                    | Hanging                                                                           | Firing Squad                                                                      | Electrocution                                                                     | Gas Chamber                                                                        | Lethal Injection                                                                    |                  |
| New Jersey         |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| New Mexico         |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| New York           |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| North Carolina (*) |                                                                                   |                                                                                   |                                                                                   | X                                                                                  |                                                                                     |                  |
| North Dakota       |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Ohio               |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Oklahoma           |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Oregon             |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Pennsylvania       |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Rhode Island       |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| South Carolina (*) |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| South Dakota       |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Tennessee          |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Texas (*)          |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Utah               |                                                                                   |                                                                                   |                                                                                   |                                                                                    | X                                                                                   |                  |
| Vermont            |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Virginia (*)       |                                                                                   |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| West Virginia      |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Washington         | X                                                                                 |                                                                                   | X                                                                                 |                                                                                    |                                                                                     |                  |
| Wisconsin          |                                                                                   |                                                                                   |                                                                                   |                                                                                    |                                                                                     | X                |
| Wyoming            |                                                                                   |                                                                                   |                                                                                   | X                                                                                  | X                                                                                   |                  |



## RIGHTS OF THE ACCUSED

### THE FINAL QUESTION

#### Student Handout 8: WEIGHING THE DEATH PENALTY

Capital punishment is a very controversial issue. Some people support it fully while others completely oppose it. There is another group of people who are unsure of their feelings on this issue, and finally, a group that would favor capital punishment in only specific cases.

Whatever your opinion, it is to your advantages to look at and consider all sides of this issue.

**Directions:** In this activity, form a small group of 3-4 people. With the members of your group, come up with 4-5 reasons for supporting the death penalty. Then, come up with 4-5 reasons for opposing the death penalty.

Be prepared to present your ideas to the class

| PROS | CONS |
|------|------|
|      |      |

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION**

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**ANSWER KEY: Weighing the Death Penalty**

| <b>PROS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>CONS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>DETERRENCE</b> - proponents believe that the death penalty keeps people from committing crimes.</p> <p><b>RETRIBUTION</b> - death may be the only sentence which is proportionate to some crimes.</p> <p><b>RISK ELIMINATED PERMANENTLY</b> - the death penalty would keep our streets safer because violent criminals would be gone for good.</p> <p><b>DUE PROCESS IS PROVIDED</b> - each person facing a sentence of death is guaranteed and provided with the due process of law, thus no violations of the Fifth Amendment's "life, liberty and or property without due process of law" exists.</p> <p><b>ECONOMICAL</b> - the death penalty would save \$38,000 per year per prisoner.</p> | <p><b>HUMAN RIGHTS VIOLATION</b> - the United States is the only country in the Western world which still allows for the death penalty.</p> <p><b>NOT A DETERRENT</b> - death penalty opponents state that criminals do not give prior thought to their action's consequences.</p> <p><b>IMMORAL</b> - opponents cite the contradiction of a state outlawing murder but upholding its right to kill.</p> <p><b>UNFAIRLY APPLIED</b> - opponents note the disproportionate number of poor and black people who are sentenced to the death penalty.</p> <p><b>NOT ECONOMICAL</b> - death penalty costs exceed imprisonment costs due to the appeals process (can cost a state 1.6-3.2 million to carry out a death penalty).</p> <p><b>RISK OF MISCARRIAGE OF JUSTICE</b> - an innocent person could be condemned to death.</p> |

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION**

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**Student Handout 9: YOU DECIDE**

The following is a series of incidents in which the accused has been found guilty of the crime he/she committed. **The decision is now yours.** Your choices are to sentence the accused to life imprisonment or to death. Be prepared to defend your choice. If you strongly believe there are circumstances in a case which warrant other considerations, you must devise an argument to present to your classmates, fellow judges, explaining your refusal. Also, prepare an alternative sentence for the person in question to meet his/her needs keeping in mind society's anger and response.

In your small group, come to an agreement as to the fate of each of the individuals facing sentencing. Remember that each one has already been found guilty. You do not have to consider their guilt or innocence nor do you have to deal with the technicalities of the trial. Just the facts....

(\* indicates actual cases)

1. Dalto Prejean is a retarded black man who shot a police officer when he was 17 years old. (\*)
2. Pervis Tyrone Payne is a 20 year old retarded man who stabbed to death the mother and babysitter of Nicholas Christopher, a three-year-old Millington, TN boy, as the young Nicholas watched. Nicholas was badly wounded as well. (\*)
3. Six months after completing a 2 1/2 year prison sentence for beating an old man to death, Bobby Harris, along with his brother, Danny, decided to rob a bank. In order to carry out the robbery, Harris needed a getaway vehicle. At a local Jack-in-the-Box, the brothers spotted two young boys in a parked car. Harris forced the boys to drive to a reservoir but assured them that he would not hurt them. When they reached the reservoir, Harris killed both boys with repeated rounds. Danny stood by and watched. Later, Harris calmly ate the dead boys' unfinished burgers. (\*)
4. A 30 year-old white male is found guilty of killing and dismembering 16 other male victims. He kept many of the remains of his victims in his home.
5. David Steffen, a young door-to-door salesman, asked to demonstrate his cleaning product in the home of 19 year-old Karen Range. Karen watched as Steffen scrubbed the tile under the sink. When he stood up, Steffen brushed against Karen's breast. She started to scream. Steffen warned her to stop but she continued. Steffen then beat her severely, ran into the kitchen, found a paring knife and returned to the bathroom where he raped Karen and cut her throat. (\*)

**RIGHTS OF THE ACCUSED**  
**THE FINAL QUESTION** \_\_\_\_\_

**Student Handout: YOU DECIDE cont.**

6. In April 1990, 17 year-old Ramond Rios was shot and killed in front of 15 passengers while riding a bus in Los Angeles. Rios had been wearing all blue which is the color worn by the "Crips." The "Crips" are a gang in East Los Angeles. Rio's killer was a 16 year-old member of the "Bloods", the arch-rival of the "Crips". The 16 year-old "Blood" assumed that Rios was a member of the "Crips," only he was mistaken. Rios didn't belong to any gang. (\*based on a true case.)

7. Billy was due in court for committing an armed robbery. Out on the street one day, he and two of his teenage friends encountered a homeless woman. On the spur of the moment, they beat her with a pipe and raped her repeatedly. The police found evidence leading them to believe that Billy had murdered a woman in the same fashion a month before. In both cases, Billy was 12 years-old. (\*)

8. Ann Johnson, a 23 year-old unmarried mother of three, has a history of police visits to her house to investigate calls made by her neighbors claiming potential domestic/child abuse. The police never found reason to suspect abuse until the tragic day when they found Ann's eight-month-old infant child dead. Ann was found guilty of shaking her child to death.

9. Convicted serial killer, Alfred Mobey, was found guilty of beating and raping 14 prostitutes in many different states.

10. Fran Nelson, an abused wife of 13 years is found guilty of killing her abusive husband. Fran killed her husband by pouring gasoline around the bed in which he had passed out. Her husband, Ed, was in a drunken state during the time she poured the gasoline. Ed was so intoxicated he did not wake up while Fran tied him to the bed so he would not escape. Fran started the bed on fire and left Ed to burn to death.

## Pretrial Release: AKA "Bail"

by Ruth Anne dePitera

You are arrested! You are booked and put in jail. You know that you have a right to remain silent, you know you have a right to counsel, but do you understand your right to reasonable bail. How long can you be detained in jail? Can you be left in jail until your trial is completed? This lesson explains the bail system in Minnesota. Bail allows pretrial release to keep you out of jail until your trial is completed.

The Eighth Amendment to the Constitution of the United States establishes the right to bail. It was developed to maintain the individual rights of the accused and provide some protection for the community. **Bail** is the money that is held in lieu of the defendant until the case is resolved. The bail bond is the surety for bail. Section 7 in the Minnesota Constitution allows defendants to post bond with a sufficient sureties. Both **bail** and **bail bonds** are designed to insure the appearance of the accused in court. If a defendant fails to appear for court, the bail is **forfeited**. This money can be used by the court to offset the taxpayer's loss for trial time and rearrest expenses. Bail money also provides an extra incentive to the defendant to make all appearances in court.

Minnesota uses both public bail and private bail bond systems. The bail is often set at the time of arraignment. However, for some charges, bail can be automatically set at the time of arrest. At an arraignment hearing, a judge considers a variety of facts to determine an appropriate bail. This bail evaluation tool, the **Verifiable Release Criteria**, is a point scale that assists the judge.

This lesson will allow students to discuss and determine pretrial release requirements using the evaluation and scale. The bail evaluations that are included in the lesson introduce students to the intake system in a very realistic way. Students may decide to set a bail. If they do, they must decide on an amount.

### Students will:

1. Understand what bail is and why it is considered a right.
2. Identify the criteria that determine "reasonable" bail.
3. Be introduced to several pretrial release systems.
4. Understand the function of pre-trial release.
5. Be able to discuss their decisions about pretrial releases, including any bail amount that they set.



## **RIGHTS OF THE ACCUSED**

**PRETRIAL RELEASE: AKA "BAIL"** \_\_\_\_\_

**Procedure cont.**

**Materials needed:** Copies of: **Student Handout: VOCABULARY LIST**  
**BACKGROUND READING: Arrest through Bail**  
**Student Handout: QUALIFICATIONS OF A CO-SIGNER**  
**Student Handout: CO-SIGNER PROFILES** (1 copy, cut up and place in a pile)  
Overheads and copies of: **Bail Evaluations**  
**Bail Bond Application Form**  
**Bail Bond Responsibility Agreement**

**Time needed:** Several class periods. Flexible because it is open ended.

**Grade level:** 9th - 12th grades

### **Procedure:**

1. Explain the introductory information.
2. Throughout the lesson, have students keep a vocabulary list using **Student Handout: VOCABULARY LIST**. They are responsible for giving the definitions that are in this lesson.
3. Have students read and discuss the **BACKGROUND INFORMATION: Arrest through Bail**.
4. Have students complete **Student Handout: VOCABULARY LIST** working together or individually.
5. Show students sample **Bail Evaluations**. At first, they might be difficult to understand. However, after viewing several samples on the overhead, they should have no problem. (The evaluations were provided by Ramsey County Project Remand. They removed the names of the defendants, but the records are real. The sheets have fictitious names to make discussion easier).
6. Instruct students on the abbreviations used on the forms. Place a list on the board for

## RIGHTS OF THE ACCUSED

### PRETRIAL RELEASE: AKA "BAIL" \_\_\_\_\_

referral. The following abbreviations are important to know:

**Procedure cont.**

**BW:** Bench warrant

**W:** Warrant

**NPA:** No permanent address

**CD:** Chemical dependency

**NVMS:** No visible means of support

**TX:** Treatment

**BCA:** Bureau of Criminal Apprehension

**NCIC:** National Computer Institute of Corrections

**Support:**

**UC:** Unemployment compensation

**GA:** Government assistance

**MEED:** Obsolete (was student support)

After reviewing samples, have the students take on the role of the judge in Arraignment court. In groups of two or three, ask them to decide what pretrial disposition is appropriate. Afterwards, have groups share and explain their logic.

7. Once bail is set by judge (groups of two or three), decide whether or not a bond company would post a bond for them. Remember that the bond agent looks very carefully at the co-signer in addition to the characteristics considered by the judge. Using **Student Handout: QUALIFICATIONS OF A CO-SIGNER**, have the students review the qualifications of a co-signer.

8. Further study questions to consider include:

- A. Why do we need bail?
- B. What if a "dangerous" person has a lot of money, can they bail out?
- C. Is the bail system only good for the people with money?
- D. Public bail vs. private bail, which costs more?
- E. Should the taxpayers pay for bail?
- F. What happens when a defendant fails to appear in court, public vs. private?

**RIGHTS OF THE ACCUSED**

**PRETRIAL RELEASE: AKA "BAIL"** \_\_\_\_\_

**Student Handout: VOCABULARY LIST**

*Please write your own definition when you understand the following terms:*

Arraignment Court

Bail

Bail Bond

Bail Evaluation

Bench Warrant

Conditional Release (Project Remand)

Co-signer

Defendant

Disposition

Felony

Forfeiture

Gross Misdemeanor

Hold

Misdemeanor

NBR

Omnibus Hearing

O.R.

Personal Recognizance Bond

Petty Misdemeanor

Premium

Pretrial Release

Pretrial Release Programs

Probation

Surety

Vera Scale (Verifiable Release Criteria)

## RIGHTS OF THE ACCUSED

### PRETRIAL RELEASE: AKA "BAIL" \_\_\_\_\_

#### BACKGROUND READING: Arrest through Bail

##### 1. Arrest

###### A. New Charge(s)

**B. Warrant:** A warrant is issued for a number of infractions, it is only issued if the person does not take care of their legal responsibilities.

*Example:* Warrants are issued for unpaid traffic tickets or any unpaid fines. If you have a warrant out for you and you are stopped for any reason, you will be arrested. It means that law enforcement is looking for you. You are not allowed to pay unpaid fines at this point. You will go to jail.

**C. Bench Warrant:** This warrant is issued by the judge if a defendant fails to appear for their court date. This is looked on as more serious neglect and will be a factor in determining a reasonable bail. Some judges may order a "hold" on defendants until they see them. No bail will be set until then.

**D. PV (probation violation)/ C/R (conditional release) Revocation:** Defendants who fail to comply with the terms of conditional release or probation are rearrested, a warrant is issued for their arrest.

*Example:* Contact with a victim in a domestic assault charge is a violation of the restraining order that is part of a pretrial release on this charge. Any contact will mean re-arrest.

*Example:* Failure to go to assigned groups or meetings, not keeping appointments with the court-assigned contacts are examples of violations of pretrial release.

##### 2. Booking

At this time, deputies search the computer for any "holds". A "hold" is any outstanding warrant, from other counties or states. A defendant is ineligible for any pretrial release until the hold is cleared. A county may replace the "hold" with a bail amount, it is up to them. This is how defendants may end up with several bails at one time.

If no "hold" appears, the intake officer may set a standard bail, thus allowing the defendant a release before arraignment. This occurs most frequently for traffic charges, fifth degree assault charges, and DUIs (driving under the influence). In some counties, there are some restraints placed on these releases. For example, in Ramsey County, there is a time restriction of a four-hour hold on DUI releases, and a twenty-four hour hold on domestic assault releases.

##### 3. Arraignment Court

If a defendant pleads "not guilty" at this initial appearance in front of a judge, the judge will continue the case by giving the defendant a court date for an *Omnibus Hearing*. The judge then decides on an appropriate pretrial disposition. Using the bail evaluation information, the judge may decide to set a particular bail, use a conditional release program, or

## RIGHTS OF THE ACCUSED

### PRETRIAL RELEASE: AKA "BAIL" \_\_\_\_\_

#### BACKGROUND READING: Arrest through Bail cont.

some combination of these. The defendant may be released on a *personal recognizance bond*, this is known as *unconditional release* or "*O-R*"ed. The defendant is trusted to show up for all court dates.

If the defendant pleads guilty, he/she gives up all rights to a trial and the judge will pass sentence. However, the judge may insist that an attorney is consulted before a guilty plea is accepted.

#### 4. Pretrial Release

**A. "O-R":** Released on your own recognizance. This would occur for defendants that received a high score on the bail evaluation, pose no risk to the community, and seem to be responsible citizens. This is also called "*NBR*"ed. (No Bail Required.) This is one form of *public bail* because the county assumes the risk for non-appearance.

**B. Conditional Release Programs:** This type of release requires the defendant to follow specific regulations when released. It gives the court an opportunity to order a person to get help. It is individualized and is usually not combined with any bail requirement. This is another form of public bail.

**C. Bail:** The entire bail amount may be posted at the jail. This must be in cash. The bail will be refunded after the final disposition of the case, which usually includes three or four court dates. Courts may take court costs or fines from that money, so that the refund may be less than the full bail amount. If a defendant misses a court date, the bail money is forfeited.

**D. Bail Bonds:** A bail bond is posted by a *Surety Company*. The cost, called the *premium*, is usually 10% of the bail amount. The bonding company also insists on a responsible *co-signer* for the bail amount. The co-signer must know the defendant, be reasonably sure that he/she will make all court appearances, be an employed citizen of the community, and be willing to sign for the entire bail amount in the event that the bail is forfeited. It is like a quick loan. This is *private bail*, because the bonding company takes the risk with a co-signer. If a defendant fails to make a court appearance, the bonding company has 45 days (more in some places) to bring the defendant in or to assist law enforcement authorities in the arrest. If the defendant is rearrested, the bonding company petitions the court to revoke the bond, so they are no longer responsible. The company must indicate how they assisted in the arrest procedure to get "*off the bond*." If the defendant takes off, the bail bond company pays the court, then is reimbursed by the co-signer. The co-signer is often a helpful resource in locating the defendant because they have the most to lose. Some defendants cannot get a bail bond, even with enough money, because no person is willing to take a chance on being the co-signer for them. This frequently happens when a defendant has prior bench warrants and no close ties in the community.

When the bonding company posts a *bail bond*, the agent gives the jail a notarized bond form and a *Power of Attorney* form. The bonding company is then responsible for the court



## RIGHTS OF THE ACCUSED

### PRETRIAL RELEASE: AKA "BAIL" \_\_\_\_\_

#### BACKGROUND READING: Arrest through Bail cont.

appearances of the defendant. This is an *appearance bond*. The accused is required to remain law abiding, or the company can revoke the bond. -The company only takes the financial risk with a qualified co-signer. The defendant cannot get a bail bond for him/her self. The bonding company can also require collateral for large bail amounts. The agent evaluates the defendant on the same set of criteria used by the court in setting bail, except that a co-signer provides an added security.

A bail bond is good for all court appearances on the specific charge. The bond is "*discharged*" or finished after the final court appearance on that charge.

**E. Bail Amounts in Minnesota:** Bail amounts vary. However, there are some standard bails. For traffic offenses, like "*driving after revocation*" (DAR), "*no insurance*", "*driving after suspension*" (DAS), the bail is frequently \$500.00. Domestic assault bails are \$1,200.00 in Hennepin County, \$500.00 (plus 24 hours in jail) in Ramsey County. DUI (driving under the influence) or DWI charges require \$1,500.00 for the first arrest, \$3,000.00 for a second arrest (called aggravated) and double after that. "*Possession of a Controlled Substance*" is often set at \$5,000.00.

Bails that are set at arraignment by the judge will be influenced by the bail evaluation. The bail must be high enough to reasonably ensure the defendant's court appearances. It will be increased if the judge believes that the accused may be a threat to the community, making it virtually impossible for the defendant to post bail. In some cases, there are bail reduction hearings. These are usually heard after the defendant has retained counsel.

**RIGHTS OF THE ACCUSED**

**PRETIRAL RELEASE: AKA "BAIL"** \_\_\_\_\_

**Student Handout: QUALIFICATIONS OF A CO-SIGNER**

1. Knows the defendant well.
2. Is reasonably sure that the defendant will make all court appearances.
3. Has been on the job for 3 or more years.
4. Has assets and income that would ensure payment in case of a forfeiture.
5. Is willing to sign and take the risk.
6. Has collateral to put up, if required.
7. Willing to sign a second mortgage on his/her home. (Large bonds ONLY.)

The agent is not going to bail out a person that appears to be a bad risk. They must be sure that the co-signer understands the responsibility that he/she assumes. Therefore, bonding companies have developed a contract/checklist for the co-signer to read, check, and sign.

**RIGHTS OF THE ACCUSED**

**PRETRIAL RELEASE: AKA "BAIL" \_\_\_\_\_**

**Student Handout: CO-SIGNER PROFILES**

*From the group of Co-Signer profiles, have each group pull a Co-Signer profile. Using the Co-Signer Qualifications as an evaluation tool, decide whether to write the bond.*

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**Co-Signer 1:** Brother of accused, life-long resident of Minneapolis, 25 years old, married, no children, works for MTC (5 years), trusts defendant will go to court. Rents, owns '89 Honda.

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**Co-Signer 2:** Met accused at a bar two weeks ago, trusts that accused will go to court, 45 years old, divorced, no children, works at Mickey's Diner (12 years). Rents, no car.

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**Co-Signer 3:** Parents of accused, life-long residents of St. Paul, afraid accused will not go to court, both employed with school system (29 years). Own home, two cars, they have three other children.

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**Co-Signer 4:** Employer of accused, resident of Minnesota (20 years), wants to help, trusts accused to go to court, owns tire business, single, 48 years old, has known defendant for three months, has adequate assets.

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**Co-Signer 5:**

(Not available for Abby)

Girlfriend of accused for six months, 22 years old, housepainter (5 years), self-employed, trusts defendant to go to court, rents, owns '86 Buick, has lived in Minnesota for 5 years.

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**RIGHTS OF THE ACCUSED**

**PRETRIAL RELEASE: AKA "BAIL"** \_\_\_\_\_



**LIBERTY BONDING AGENCY, INC.**

Lowry Square, Suite 207  
345 North Wabasha Street  
St. Paul, Minnesota 55102  
(612) 771-0000

**CONTRACT FOR RESPONSIBILITY OF INDEMNITOR(S)**

DATE OF BOND \_\_\_\_\_ AMOUNT \_\_\_\_\_

POWER NUMBER(S) \_\_\_\_\_

DEFENDANT \_\_\_\_\_

**I UNDERSTAND THAT IN SIGNING THE BOND APPLICATION/INDEMNITY AGREEMENT FOR THE RELEASE OF THE ABOVE NAMED DEFENDANT...**

- ☐ I cannot revoke or cancel this bond once it is posted.
- ☐ I am responsible for all of his/her appearances in the proper court, as ordered, until the case(s) is complete.
- ☐ I am responsible for the full amount of the bond if he/she fails to make a court appearance and the bond is ordered forfeited by the court.
- ☐ I am responsible for all expenses incurred by this agency in its efforts to return the Defendant to custody and/or its efforts in obtaining bond reinstatement.
- ☐ I am responsible for all requirements as set forth in the Bond Application/Indemnity Agreement I signed. I understand that this document, and the Agreement, are written contracts enforceable in Civil Court.
- ☐ I am responsible for any unpaid premium, if it is not paid as originally agreed, and on time.
- ☐ I understand that the full bond premium charged is this agency's fee, for writing the bond(s), and that no part is refundable.
- ☐ I understand that any cash collateral I have posted as security is returnable, only after the court has confirmed that the bond(s) is discharged.

I hereby place my signature this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Indemnitor

\_\_\_\_\_  
Indemnitor

\_\_\_\_\_  
Indemnitor

\_\_\_\_\_  
Indemnitor

— Witnessed —

Agent: \_\_\_\_\_  
Liberty Bonding Agency, Inc.

# RIGHTS OF THE ACCUSED

## PRETRIAL RELEASE: AKA "BAIL"

DEFENDANT

1 FULL NAME \_\_\_\_\_

2 address \_\_\_\_\_

\_\_\_\_\_ zip \_\_\_\_\_

how long \_\_\_\_\_ rent or own \_\_\_\_\_

how long in Minnesota \_\_\_\_\_

former address \_\_\_\_\_

\_\_\_\_\_ how long \_\_\_\_\_

3 PHONE \_\_\_\_\_ other \_\_\_\_\_

4 ATTORNEY \_\_\_\_\_

address \_\_\_\_\_ phone \_\_\_\_\_

5 EMPLOYER \_\_\_\_\_

address \_\_\_\_\_

phone \_\_\_\_\_ how long \_\_\_\_\_

position \_\_\_\_\_ supervisor \_\_\_\_\_

6 DATA DOB \_\_\_\_\_ age \_\_\_\_\_ sex \_\_\_\_\_

race \_\_\_\_\_ height \_\_\_\_\_ weight \_\_\_\_\_

hair \_\_\_\_\_ eyes \_\_\_\_\_ # children \_\_\_\_\_

school attending \_\_\_\_\_

marital status \_\_\_\_\_

social security no. \_\_\_\_\_

driver's license no. \_\_\_\_\_

7 SPOUSE/FIANCE \_\_\_\_\_

address \_\_\_\_\_

phone \_\_\_\_\_ employer \_\_\_\_\_

8 PARENTS \_\_\_\_\_

address \_\_\_\_\_ phone \_\_\_\_\_

9 OTHER RELATIVES \_\_\_\_\_

address \_\_\_\_\_ phone \_\_\_\_\_

other \_\_\_\_\_

address \_\_\_\_\_ phone \_\_\_\_\_

10 BEST FRIEND  
(not indemnitor)  
address \_\_\_\_\_ phone \_\_\_\_\_

11 CHECKING ACCT. NO. \_\_\_\_\_

Bank \_\_\_\_\_

SAVINGS ACCT. NO. \_\_\_\_\_

Bank \_\_\_\_\_

12 VEHICLES:  
make \_\_\_\_\_ year \_\_\_\_\_ lic. no. \_\_\_\_\_

make \_\_\_\_\_ year \_\_\_\_\_ lic. no. \_\_\_\_\_

13 OTHER INCOME/PROPERTY \_\_\_\_\_

### APPLICATION FOR SURETY BAIL BOND



**LIBERTY BONDING AGENCY, INC.**

License # 2010 101 North Washington Street St. Paul, Minnesota 55102

ST. PAUL (612) 771-0000  
MINNEAPOLIS (612) 340-0000

INDEMNITOR

FULL NAME \_\_\_\_\_

address \_\_\_\_\_

\_\_\_\_\_ zip \_\_\_\_\_

how long \_\_\_\_\_ rent or own \_\_\_\_\_

how long in Minnesota \_\_\_\_\_

PHONE \_\_\_\_\_ other \_\_\_\_\_

RELATIONSHIP  
TO DEFENDANT \_\_\_\_\_

SOCIAL SECURITY NO. \_\_\_\_\_

DRIVER'S LICENSE NO. \_\_\_\_\_

EMPLOYER \_\_\_\_\_

address \_\_\_\_\_ zip \_\_\_\_\_

phone \_\_\_\_\_ how long \_\_\_\_\_

position \_\_\_\_\_ supervisor \_\_\_\_\_

SPOUSE  
SPOUSE'S EMPLOYER \_\_\_\_\_ phone \_\_\_\_\_

CHECKING ACCT. NO. \_\_\_\_\_

Bank \_\_\_\_\_

SAVINGS ACCT. NO. \_\_\_\_\_

Bank \_\_\_\_\_

VEHICLES:  
make \_\_\_\_\_ year \_\_\_\_\_ lic. no. \_\_\_\_\_

make \_\_\_\_\_ year \_\_\_\_\_ lic. no. \_\_\_\_\_

OTHER PROPERTY \_\_\_\_\_

address \_\_\_\_\_

By signing below I (we) fully agree to pay upon demand the full premium of this bond, if defendant fails to do so. I (we) will also fully agree to pay upon demand the full amount of this bond if defendant fails to show up for a scheduled court appearance. I (we) agree to pay upon demand all expenses connected with the defendant's failure to appear in court as ordered, which may include reasonable attorney fees. Should I (we) fail to pay any of said sums upon demand, I (we) agree to pay a late fee equal to 1% per month of the unpaid balance.

X  
INDEMNITOR \_\_\_\_\_ DATE \_\_\_\_\_

X  
INDEMNITOR \_\_\_\_\_ DATE \_\_\_\_\_

X  
INDEMNITOR \_\_\_\_\_ DATE \_\_\_\_\_

DEFENDANT: READ CAREFULLY BEFORE SIGNING  
FAILURE TO APPEAR FOR TRIAL MAY SUBJECT YOU TO STATE OR  
FEDERAL BAIL JUMPING LAWS. THIS BOND WILL BE WITHDRAWN  
IF ANY INFORMATION GIVEN IS FALSE.

DATED \_\_\_\_\_

X \_\_\_\_\_



# RIGHTS OF THE ACCUSED

## PRETRIAL RELEASE: AKA "BAIL"

### INDEMNITY AGREEMENT FOR SURETY BAIL BOND RANGER INSURANCE COMPANY

The undersigned, called "First Party," make application to LIBERTY BONDING AGENCY, INC., called "Second Party," for execution by RANGER INSURANCE COMPANY, a corporation called "Surety" of a Bail Undertaking herein referred to as "Bail Bond" in the penal amount of \$\_\_\_\_\_ for \_\_\_\_\_

called "Principal" and in consideration of Second Party arranging for execution of continuance of this Bail Bond, First Party does jointly and severally agree as follows:

FIRST To pay Second Party \$\_\_\_\_\_ per annum for the Bail Bond. The premium is fully earned upon the release of Principal. The fact that Defendant may have been improperly arrested, or his bail reduced or his case dismissed, shall not obligate the return of any portion of said premium. This Bond is renewable each year. First Party agrees to pay to Second Party a renewal premium in the amount stated above, twelve months after the date on which this Bond was executed. If said renewal premium is not paid upon written demand therefore, Second Party or Surety has the right to surrender Principal, as provided in the California Penal Code, Section 1300, and exonerate the Bond.

SECOND To reimburse Second Party and Surety for actual expenses incurred by Second Party or Surety in connection with the arranging and/or execution of Bail Bond or any renewal or substitution thereof whether or not said Principal refuses to be released after arrangements have been initiated by Second Party, in accordance with the regulations of the Insurance Commissioner in effect at the time such expenses are incurred.

THIRD To reimburse Second Party and Surety for actual expenses incurred and caused by a breach by the Principal of any of the terms for which the application and Bail Bond were written not in excess of the penal amount of the Bail Bond including all expenses or liabilities incurred as a result of searching for, recapturing, or returning Principal to custody, incurred by Second Party or Surety or as necessary in apprehending or endeavoring to apprehend Principal, including legal fees incurred by Second Party or Surety in making application to a court for an order to vacate or to set aside the order of forfeiture or Summary Judgement entered thereon. However, no expenses or liabilities incurred for recapturing or returning Principal to custody shall be chargeable after the entry of Summary Judgement.

FOURTH To pay the Second Party or Surety, in the event that it is necessary for them to institute suit for a breach of this agreement, a reasonable attorney's fee which shall, in no event, be less than the sum of twenty-five dollars (\$25.00).

FIFTH To pay Second Party or Surety as collateral upon demand, the penal amount of Bail Bond whenever Second Party or Surety, as a result of information concealed or misrepresented by the First Party or Principal or other reasonable cause, any one of which was material to hazard assumed deems payment necessary to protect the Second Party or Surety hereunder. Where, as a result of judicial action, bail has been increased and no collateral or insufficient collateral, in the sole discretion of Second Party or Surety, is furnished to indemnify against such increase in the bail, Second party or Surety may demand such collateral as will indemnify them against such increased bail.

SIXTH To pay Second Party or Surety immediately upon demand after entry of Summary Judgement, pursuant to California Penal Code, Section 1308. SEVENTH To aid Second Party or Surety in securing release or exoneration of Second Party or Surety from all liability under Bail Bond, including the surrender of Principal to Court should Second Party or Surety deem such action advisable.

EIGHTH That all money or other property which the First Party has deposited or may deposit with the Second Party or the Surety may be applied as collateral security or indemnity for matters contained herein, and to accomplish the purposes contained herein, the Second Party and/or Surety is authorized to lawfully levy upon said collateral in the manner provided by law and to apply the proceeds therefrom and any and all money deposited to payment or reimbursement for the hereinabove liabilities, losses, costs, damages and expenses. If collateral received by Second Party is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon the application of the collateral to the forfeiture, subject to any claim of Second Party and Surety for unpaid Premium or the hereinabove charges.

NINTH Second Party or Surety shall not surrender Principal to custody prior to the time specified in the Bail Bond for the appearance of the Principal, or prior to any occasion when the presence of the Principal in Court is lawfully required, without returning all premium paid therefor, unless as a result of judicial action, information concealed or misrepresented by the Principal, or other reasonable cause, any one of which was material to the hazard assumed, the hazard was substantially increased and the additional premium, if any, for such increased hazard was not paid within a reasonable time.

TENTH The obligations hereunder are joint and several and any amounts due shall bear interest at the maximum rate of interest allowed by law. The Second Party and the Surety shall not be first obliged to proceed against the Principal on Bail Bond before having recourse against First Party or any of them, the First Party hereby expressly waiving the benefits of law requiring the Second Party or the Surety to make claim upon or to proceed or enforce remedies against the Principal before making demand upon or proceeding and or enforcing its remedies against any one or more of the First Party.

ELEVENTH In making application for Bail Bond, each of us warrants all statements made by him or her on this application to be true, and we agree to advise Second Party or Surety of any change, including but not limited to change of address or employment of either the Principal or of any of the First Party, or any other material change in circumstances within forty-eight (48) hours after knowledge such change shall have occurred, and the First Party agrees that any failure to so notify shall be reasonable cause for the immediate surrender of the Principal.

TWELFTH The undersigned agree that these obligations apply to all other Bail Bonds executed for the same charge for which the above mentioned Bail Bond was executed or any charge arising out of the same transaction, regardless of whether said Bail Bonds are filed before or after conviction, but not in a greater amount.

IN WITNESS WHEREOF the First Party whose names are subscribed to the Bail Agreement executed herewith each represents: I have read the Bail Agreement and I know the contents thereof; that I hereby acknowledge receipt of a copy of said Bail Agreement; that I am the true and lawful owner of the property, whether real or personal which I set forth in the Application for Bail (which Application is made a part hereof by reference as though herein fully set forth) is my property and that I own such property free and clear of all liens or encumbrances except as so noted, and I further promise not to transfer or encumber any of said property until my liability on said Bail Agreement has been released. I understand the Second Party and/or Surety is permitting the said bail to remain in force upon release of the statements made by me and I do hereby

this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ set my hand

Defendant  
SIGNATURE \_\_\_\_\_ HOME PHONE \_\_\_\_\_ WORK PHONE \_\_\_\_\_

NAME \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

EMPLOYER \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

DMV ID \_\_\_\_\_ S.S. No. \_\_\_\_\_ Date of Birth \_\_\_\_\_

Indemnitor  
SIGNATURE \_\_\_\_\_ HOME PHONE \_\_\_\_\_ WORK PHONE \_\_\_\_\_

NAME \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

EMPLOYER \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

DMV ID \_\_\_\_\_ S.S. No. \_\_\_\_\_ Date of Birth \_\_\_\_\_

Indemnitor  
SIGNATURE \_\_\_\_\_ HOME PHONE \_\_\_\_\_ WORK PHONE \_\_\_\_\_

NAME \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

EMPLOYER \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

DMV ID \_\_\_\_\_ S.S. No. \_\_\_\_\_ Date of Birth \_\_\_\_\_

Indemnitor  
SIGNATURE \_\_\_\_\_ HOME PHONE \_\_\_\_\_ WORK PHONE \_\_\_\_\_

NAME \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

EMPLOYER \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

DMV ID \_\_\_\_\_ S.S. No. \_\_\_\_\_ Date of Birth \_\_\_\_\_

# RIGHTS OF THE ACCUSED

## PRETRIAL RELEASE: AKA "BAIL"

**INDEMNITOR'S HOLD HARMLESS AGREEMENT**

(we) the undersigned, in consideration of the execution by Goldberg Bonding Company of a bail bond in the amount of \$ \_\_\_\_\_ Dollars for \_\_\_\_\_

the principal on said bail bond do hereby unconditionally guarantee the appearance of the said principal as required by the Court including any conditions or responsibilities set by the court which the defendant is required to obey, including trial and preliminary appearances, in the \_\_\_\_\_ Court, and in the event that the said principal does not appear as required by the Court including trial and preliminary appearances, aforesaid, I (we) do hereby unconditionally agree to reimburse the said Goldberg Bonding Company for any loss or losses which it may sustain as a result of the execution of the aforesaid bail bond and failure of principal to so appear. I understand that my Social Security Number is required to complete this form and I submit it below.

IN TESTIMONY WHEREOF we have hereunto set our hands and affixed our seals this \_\_\_\_\_ day of \_\_\_\_\_

**PLEASE PRINT**

|                                                                                                                                                          |                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| FULL NAME _____                                                                                                                                          | SAVINGS ACCOUNT                                                                                                                                                                     |
| Address _____ Apt. No. _____                                                                                                                             | Name of Bank _____ Acct. # _____                                                                                                                                                    |
| City _____ State _____ Zip _____                                                                                                                         | Address _____                                                                                                                                                                       |
| Age _____ Date of Birth _____                                                                                                                            | CHECKING ACCOUNT                                                                                                                                                                    |
| How long have you lived at above address _____ years _____ mos.                                                                                          | Name of Bank _____ Acct. # _____                                                                                                                                                    |
| Do you own the property? <input type="checkbox"/> Yes <input type="checkbox"/> No                                                                        | Address _____                                                                                                                                                                       |
| Phone: Home ( ) _____ Work ( ) _____                                                                                                                     | Driver's License No. _____                                                                                                                                                          |
| Other phone no.'s where you can be contacted _____                                                                                                       | Own Vehicle? If yes, show land below _____                                                                                                                                          |
| Social Security No. _____                                                                                                                                | Make _____ Year _____ License No. _____                                                                                                                                             |
| Bail Bond is for: <input type="checkbox"/> son <input type="checkbox"/> daughter <input type="checkbox"/> in law <input type="checkbox"/> other relative | Make _____ Year _____ License No. _____                                                                                                                                             |
| <input type="checkbox"/> friend <input type="checkbox"/> brother <input type="checkbox"/> sister                                                         | Name of Car Finance Co. _____                                                                                                                                                       |
| Your Employer _____                                                                                                                                      | Address _____                                                                                                                                                                       |
| Business Address _____                                                                                                                                   | List All Other Real Estate You Own Below _____                                                                                                                                      |
| City _____ State _____ Zip _____                                                                                                                         | Address of Property _____                                                                                                                                                           |
| Length of Employment _____ years _____ months                                                                                                            | Type of Property <input type="checkbox"/> Business <input type="checkbox"/> Farm <input type="checkbox"/> Lot(s) <input type="checkbox"/> Lake Home <input type="checkbox"/> Rental |
| Job Title _____                                                                                                                                          | OTHER CREDIT REFERENCE                                                                                                                                                              |
| Name of Supervisor _____                                                                                                                                 | Name _____ <input type="checkbox"/> Loan or <input type="checkbox"/> Charge                                                                                                         |
| Spouse's Name _____                                                                                                                                      | Address _____ City _____                                                                                                                                                            |
| Spouse's Employer _____                                                                                                                                  |                                                                                                                                                                                     |
| Business Address _____                                                                                                                                   |                                                                                                                                                                                     |
| City _____ State _____ Zip _____                                                                                                                         |                                                                                                                                                                                     |
| Length of Employment _____ yrs _____ mos. Phone No. _____                                                                                                |                                                                                                                                                                                     |

Everything I have stated in this application for a bail bond is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check any credit and employment history and to answer questions about your credit experience with me.

By signing below I (we) fully agree to pay upon demand the full premium on this bond, if defendant fails to do so. I (we) will also fully agree to pay upon demand the full amount of this bond if defendant fails to show up for a scheduled court appearance. I (we) agree to pay upon demand all expenses connected with the defendant's failure to appear in court as ordered, which may include reasonable attorney fees. Should I (we) fail to pay any of said sums upon demand, I (we) agree to pay a late fee equal to 8% per annum of the unpaid balance.

STATE OF \_\_\_\_\_ ss. \_\_\_\_\_ Indemnitor \_\_\_\_\_ (Seal)  
COUNTY OF \_\_\_\_\_ ss. \_\_\_\_\_ Indemnitor \_\_\_\_\_ (Seal)

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ before me personally appeared \_\_\_\_\_ who being by me duly sworn, did depose and say that the facts contained in the foregoing statement(s) are true and correct and that said statement(s) is (are) made for the purpose of inducing GOLDBERG BONDING COMPANY to execute the bond above described.

Notary Public

# RIGHTS OF THE ACCUSED

## PRETRIAL RELEASE: AKA "BAIL"

FILL OUT ALL BLANKS THIS SIDE ONLY - SIGN - WHEN RELEASED BY JAIL. BRING TO

1 **FULL NAME**  
Please Print \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
How Long? \_\_\_\_\_ Years \_\_\_\_\_ Mos Rent ( ) Own ( )  
Previous Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ How Long? \_\_\_\_\_  
How long have you resided in Minnesota? \_\_\_\_\_

2 **PHONE**  
Residence Phone No \_\_\_\_\_  
(If None, Give No. at which you can be Reached) \_\_\_\_\_

3 **ATTORNEY**  
Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_

4 **EMPLOYER**  
Name \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_  
How Long? \_\_\_\_\_ Years \_\_\_\_\_ Mos Job Title \_\_\_\_\_  
Phone \_\_\_\_\_ Supervisor \_\_\_\_\_

5 **PERSONAL DATA & DESCRIPTION**  
Age \_\_\_\_\_ Birth Date \_\_\_\_\_ Sex \_\_\_\_\_  
Race \_\_\_\_\_ Height \_\_\_\_\_ Weight \_\_\_\_\_  
Hair \_\_\_\_\_ Eyes \_\_\_\_\_  
Marital Status M ( ) Single ( ) Divorced ( ) Separated ( )  
No. of Children \_\_\_\_\_ School \_\_\_\_\_

6 **SOCIAL SECURITY NO.** \_\_\_\_\_

7 **SPOUSE, GIRL FRIEND OR BOY FRIEND**  
Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_  
Employer \_\_\_\_\_

8 **YOUR FATHER & MOTHER**  
Names \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_

9 **Sisters, Brothers, Aunts, Uncles**  
1 Name \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_  
Phone \_\_\_\_\_ Relationship \_\_\_\_\_  
2 Name \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_  
Phone \_\_\_\_\_ Relationship \_\_\_\_\_

10 **BEST FRIEND OTHER THAN CO-SIGNER**  
Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_

11 **CHECKING ACCOUNT**  
Name of Bank \_\_\_\_\_ Acct # \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_

12 **SAVINGS ACCOUNT**  
Name of Bank \_\_\_\_\_ Acct # \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_

13 **OTHER CREDIT REFERENCE**  
Name \_\_\_\_\_ ☐ Loan or ☐ Charge  
Address \_\_\_\_\_ City \_\_\_\_\_

14 **Driver's License No.** \_\_\_\_\_

15 **OWN VEHICLE?** Make \_\_\_\_\_ Year \_\_\_\_\_ License No. \_\_\_\_\_  
Make \_\_\_\_\_ Year \_\_\_\_\_ License No. \_\_\_\_\_  
Name of Car Finance Co. \_\_\_\_\_  
Address of Car Finance Co. \_\_\_\_\_

16 **LIST ALL OTHER REAL ESTATE**  
Address of Property \_\_\_\_\_  
Type of Property ☐ Business ☐ Farm ☐ Lot(s) ☐ Lake Home ☐

17 **LIST OTHER INCOME & SOURCE**  
Type (S/S, Pension, VA Comp, etc.) \_\_\_\_\_  
Payer \_\_\_\_\_ Claim No. \_\_\_\_\_

**GOLDBERG BONDING COMPANY**  
316 So. 4th St. Minneapolis, MN 55415 Phone: 333.8111  
Toll Free 1-800-328-4900

### APPLICATION AND INDEMNITY FOR BAIL BOND

THIS SECTION FOR OFFICE & AGENT'S USE ONLY

FILE: LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_ INITIAL \_\_\_\_\_

Bond Amount \$ \_\_\_\_\_  
Insurance Date \_\_\_\_\_  
Power Number(s) \_\_\_\_\_  
Bail Bond Written At \_\_\_\_\_  
Executing Agent \_\_\_\_\_  
Agent Sharing Commission \_\_\_\_\_  
Commission (List separate \$ \_\_\_\_\_  
commission for each bond) \$ \_\_\_\_\_  
Pay Travel to Executing Agent \$ \_\_\_\_\_

**PREMIUM**  
PAID Cash ( ) Check ( ) Visa/MC ( )  
Charge my account \$ \_\_\_\_\_  
(cash collected by agent)  
Amount of check attached \$ \_\_\_\_\_  
Paid at Office \$ \_\_\_\_\_  
Cash Journal or Agent's Acct \_\_\_\_\_  
Entry Date \_\_\_\_\_ Initials \_\_\_\_\_  
OWES \$ \_\_\_\_\_  
Billing or Payment Arrangements \_\_\_\_\_

Remarks \_\_\_\_\_

Bond Ok'd by \_\_\_\_\_ Premium \$ \_\_\_\_\_  
Travel \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

IN CONSIDERATION OF THE EXECUTION OF THE BOND OR BONDS HEREIN APPLIED FOR, I agree to pay upon demand the premium and further to hold harmless, indemnify, and keep indemnified the GOLDBERG BONDING COMPANY FROM ALL LOSS, COST OR EXPENSE which it may sustain as a consequence of or incident to the execution of or incident to the execution of the bond or bonds applied for which may include reasonable attorney fees. Should I fail to pay any of said sums upon demand, I agree to pay a late fee equal to 8% per annum on the unpaid balance.

I further agree that at all times, while I am at liberty on the bond or bonds herein applied for, or any continuations or rewrites of same that I will advise the GOLDBERG BONDING COMPANY, through its agent, of any change in residence address within 48 hours. 2. I will not commit any acts or exercise any conduct which would deprive the court to which the bond or bonds herein applied for are returnable, of my jurisdiction or custody. Failure to comply with the above shall be cause for my surrender into custody. 3. If for any reason I breach any of the above mentioned commitments of 1 and 2 above, I hereby authorize GOLDBERG BONDING COMPANY to correct such breach on my behalf, including if necessary, the return of my person to the proper jurisdiction or custody.

My Social Security number is given to Goldberg Bonding, voluntarily as provided by law.

#### READ CAREFULLY BEFORE SIGNING

FAILURE TO APPEAR FOR TRIAL MAY SUBJECT YOU TO STATE OR FEDERAL BAIL JUMPING LAWS. THIS BOND WILL BE WITHDRAWN IF ANY INFORMATION GIVEN IS FALSE.

PREMIUM OF THIS BOND IS NOT RETURNABLE

**COME TO OUR  
OFFICE AS SOON  
AS YOU GET OUT**

SIGN  
HERE  
AND

X

Signature of Applicant

Date

BRING THIS TO OFFICE ACROSS THE STREET FROM JAIL WHEN YOU GET OUT - IF OFFICE CLOSED, DROP INTO MAIL CHUTE.

GOLDBERG BONDING COMPANY 316 So. 4th Street, Minneapolis, MN 55415

Minnesota Center for Community Legal Education  
Hamline University School of Law

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**RIGHTS OF THE ACCUSED**  
**PRETRIAL RELEASE: AKA "BAIL"**

St. Paul-Ramsey County  
 Pretrial Services

**VERIFIABLE RELEASE CRITERIA**

|                                                                                                                                |                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <b>RESIDENCE IN AREA</b>                                                                                                       |                                                                                           |
| A.                                                                                                                             | 3 Present Residence - 1 year + or owns Dwelling                                           |
|                                                                                                                                | 2 Present Residence - 6 Months + or Present and Prior 1 year                              |
|                                                                                                                                | 1 Present Residence - 3 Months + or Present and Prior 6 Months                            |
|                                                                                                                                | 0 Present Residence - 3 Months or Less at Any Dwelling                                    |
| <b>FAMILY TIES</b>                                                                                                             |                                                                                           |
| B.                                                                                                                             | 3 Lives with Family                                                                       |
|                                                                                                                                | 2 Lives with Relatives                                                                    |
|                                                                                                                                | 1 Lives with Nonfamily Individual                                                         |
|                                                                                                                                | 0 Lives Alone                                                                             |
| <b>TIME IN AREA</b>                                                                                                            |                                                                                           |
| C.                                                                                                                             | 1 Years of More (continuous)                                                              |
| <b>HEAVILY WEIGHTED OFFENSES</b>                                                                                               |                                                                                           |
| D.                                                                                                                             | -3 Crimes Against the Person                                                              |
|                                                                                                                                | -3 Narcotic Offense                                                                       |
| <b>EMPLOYMENT</b>                                                                                                              |                                                                                           |
| E.                                                                                                                             | 3 Present Local Job - 1 Year +                                                            |
|                                                                                                                                | 2 Present Local Job - 6 Months +                                                          |
|                                                                                                                                | 2 Welfare - AFDC - 6 Months +                                                             |
|                                                                                                                                | 2 Full-Time Student Status - 6 Months +                                                   |
|                                                                                                                                | 1 New Job, General Assistance, Unemployment Compensation,<br>Family Support               |
|                                                                                                                                | 1 New Student Status                                                                      |
|                                                                                                                                | 0 Unemployment - No Visible Means of Support                                              |
| <b>PRIOR RECORD</b>                                                                                                            |                                                                                           |
| F.                                                                                                                             | 2 No Convictions                                                                          |
|                                                                                                                                | 1 One Misdemeanor Conviction                                                              |
|                                                                                                                                | 0 Two Misdemeanor Convictions or One Felony Conviction                                    |
|                                                                                                                                | -1 Three Misdemeanor Convictions or Two Felony Convictions                                |
| <b>DISCRETION</b>                                                                                                              |                                                                                           |
| G.                                                                                                                             | 1 Pregnancy, Old Age, Poor Health                                                         |
|                                                                                                                                | -2 Threat to Himself/Herself or Others                                                    |
|                                                                                                                                | -2 Bench Warrant, Escape, Chemical Dependency, Probation Violations,<br>Contempt of Court |
|                                                                                                                                | -3 Weapons used in Present Offense                                                        |
| *To be recommended for release or actually released, a defendant need                                                          |                                                                                           |
| (1) A total of 3 <u>verified</u> points for a felony                                                                           |                                                                                           |
| (2) A total of 1 <u>verified</u> point for a misdemeanor                                                                       |                                                                                           |
| (3) Petit misdemeanor matters should be released regardless of score<br>unless N.P.A. or many DW's in record                   |                                                                                           |
| (4) A local address within the State limits                                                                                    |                                                                                           |
| (5) All felony defendants should also be reviewed for the<br>possibility of a C-R recommendation (-1 to +2)                    |                                                                                           |
| (6) Misdemeanor domestic abuse must score at least +3 for an OR<br>recommendation                                              |                                                                                           |
| *A "NONE" recommendation should be made primarily for those persons<br>who score well enough for a release recommendation but: |                                                                                           |
| (1) They have a charge of a similar or related nature pending                                                                  |                                                                                           |
| (2) They have a similar related conviction within the past six months                                                          |                                                                                           |
| (3) Information is unverified (except petty Misdemeanors)                                                                      |                                                                                           |



**PRETIRAL RELEASE: AKA "BAIL"**

## BAIL EVALUATION

Minnesota Center for Community Legal Education  
Hamline University School of Law

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**RIGHTS OF THE ACCUSED**  
**PRETRIAL RELEASE: AKA "BAIL"**

PROJECT REMAND/RAMSEY COUNTY PRETRIAL SERVICES

BAIL EVALUATION

**FEL** GM **M** PM CRIM TRAF CELL DE **Bruno B.**  
 DIV. 1 2 3 4 5 **6** Bonded Screener Steel  
 Court Dates 4/12/91 4/22/91 Booking Time & Date 04/12/91 2:30  
 NAME [REDACTED] DOB 08/05/70 SEX M RACE W AG 21  
 ADDRESS [REDACTED] W/HOM St. Paul 55117 Paul 3 HOW LONG 3  
 PRIOR ADDRESS Charles St. 3 mi 0 METRIC BEA 1

CHARGES (C) fee info to Paul, (C) open bottle, (C) Burglary TH  
 SGL MAR DIV SEP WID LENGTH 5'10" B BAIL \$200 FUNDS AVAIL? RE  
 DEPENDENTS none NO. & AGE ATTENDED? YES NO ADDRESS/PHONE SUPPORT YES NO AMOUNT  
 EMPLOYED none ADDRESS/PHONE HOW LONG C  
 NET WAGE PREVIOUS EMPLOYER HOW LONG  
 SUPPORT UC AFDC GA MEED SSI PENSION FAMILY NVMS at Woodco AMOUNT HOW LONG 1  
 STUDENT 11th grade LEARNING DISABILITIES SPECIAL NEEDS MILITARY YEARS DISCH? A-AF-N-M-R  
 CARE OF PHYSICIAN YES NO LAST TIME MEDS PREGNANT 65 OR OLDER C  
 OWN AUTO YES NO MAKE & YEAR OWN RENT R&B VALUE LG. ASSETS  
 ALCOHOL/DRUG USE YES NO TYPES Beer HOW OFTEN 1X week COMPLAINTS PROBLEMS CONCERN C  
 CD PSYCH TX EVAL NONE WHERE WHEN LENGTH COMPLETION

| DATE            | AGENCY          | CONVICTIONS         | DISPOSITION                                  |
|-----------------|-----------------|---------------------|----------------------------------------------|
| <u>3/20/90</u>  | <u>St. Paul</u> | <u>Petty Theft</u>  | <u>\$100 + 20 days to pay \$100 - 1st/90</u> |
| <u>11/25/89</u> | <u>St. Paul</u> | <u>theft</u>        | <u>1st/90</u>                                |
| <u>BOA</u>      | <u>Clear</u>    |                     |                                              |
| <u>Waco</u>     | <u>Min JPH</u>  | <u>MAY 90 11424</u> |                                              |
| <u>Truffie</u>  | <u>Clear</u>    |                     |                                              |

PENDING CHARGES HOLDS BAIL OR NONE LOCATION BAIL AMT COURT DATE  
 PROB. PAROLE REMAND NONE AGENT/PHONE/LOCATION CONTACTED YES NO  
 REMAND PHONE ADDRESS St. Paul RELATIONSHIP father  
 VERIFIED YES NO RECOMMEND YES NO CR NONE part of theft conviction  
 TOTAL GRANT OR YES NO YES NO PVI ATTY WARRANT OFFICE YES NO THREAT YES NO C  
 COMMENTS INTERPRETER

**PRETIRAL RELEASE: AKA "BAIL"**

## BAIL EVALUATION

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**PRETIRAL RELEASE: AKA "BAIL"**

# Dobie D. BAIL EVALUATION

Minnesota Center for Community Legal Education  
Hamline University School of Law

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**PRETIRAL RELEASE: AKA "BAIL"**

**ELVIN E.** C.R. to T.P.

## BAIL EVALUATION

FEL GM (M) PM CRIM TRAF CELL BB ADC

DIV. (1) 2 3 4 5 (6) FC 8-13-91 Screener Stocker

Court Dates 7/29/91 magnum Booking Time & Date 07/27/91 1515

| NAME       | DOB        | AGE        | SEX        | RACE       | ETH        |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| ALIEN      | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| PHONE      | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

-H [REDACTED] 5/5/96

|                                                             |  |  |  |  |  |  |  |  |  |                   |  |
|-------------------------------------------------------------|--|--|--|--|--|--|--|--|--|-------------------|--|
| CHARGES                                                     |  |  |  |  |  |  |  |  |  | -4                |  |
| (A) ROR, (C) Poss Revoked X, (E) No inner lanes (B) ROR/PAC |  |  |  |  |  |  |  |  |  |                   |  |
| (B) No MC and /- PAC                                        |  |  |  |  |  |  |  |  |  | FUNDING AVAILABLE |  |
| SGL MAR DIV SEP WID                                         |  |  |  |  |  |  |  |  |  | EMPLOYER          |  |
| DEPENDENTS                                                  |  |  |  |  |  |  |  |  |  | SUPPORT           |  |
| EMPLOYER                                                    |  |  |  |  |  |  |  |  |  | AMOUNT            |  |
| UNEMPLOYED                                                  |  |  |  |  |  |  |  |  |  | HOW LONG          |  |
| NET WAGE                                                    |  |  |  |  |  |  |  |  |  | HOW LONG          |  |
| PREVIOUS EMPLOYER                                           |  |  |  |  |  |  |  |  |  | HOW LONG          |  |
| SUPPORT                                                     |  |  |  |  |  |  |  |  |  | HOW LONG          |  |
| IC AFDC GA MEED SSI PENSION FAMILY NVMS                     |  |  |  |  |  |  |  |  |  | AMOUNT            |  |
| STUDENT                                                     |  |  |  |  |  |  |  |  |  | DISCHARGE         |  |
| CARE OF PHYSICIAN                                           |  |  |  |  |  |  |  |  |  | YEARS             |  |
| YES                                                         |  |  |  |  |  |  |  |  |  | DISCHARGE         |  |
| OWN AUTO                                                    |  |  |  |  |  |  |  |  |  | YEARS             |  |
| YES                                                         |  |  |  |  |  |  |  |  |  | DISCHARGE         |  |
| TECH/DRUG USE                                               |  |  |  |  |  |  |  |  |  | YEARS             |  |
| YES                                                         |  |  |  |  |  |  |  |  |  | DISCHARGE         |  |
| CD PSYCH TX EVAL                                            |  |  |  |  |  |  |  |  |  | COMPLETION        |  |

| DATE           | AGENCY   | CONVICTIONS                        | DISPOSITION                                  |
|----------------|----------|------------------------------------|----------------------------------------------|
| 7/28/90        | St. Paul | Procedural, Contact<br>Petty Theft | Under Supervision # 3-34238<br>300 0.5 years |
| traffic<br>FBI | clear    |                                    |                                              |
| NCIC           | FBI JD#  | 821528EA7                          |                                              |
|                |          |                                    |                                              |
|                |          |                                    |                                              |
|                |          |                                    |                                              |

|                 |        |         |                      |  |  |             |  |  |                      |  |  |
|-----------------|--------|---------|----------------------|--|--|-------------|--|--|----------------------|--|--|
| PENDING CHARGES |        |         | LOCATION             |  |  | HAIL AMT    |  |  | COURT DATE           |  |  |
| HOLDS           | BAIL   | OR NONE | AGENT/PHONE/LOCATION |  |  | CONTACTED   |  |  | YES NO               |  |  |
| PROB.           | PAROLE | REMAND  | NONE                 |  |  | VERIFIED    |  |  | PHONE ADDRESS        |  |  |
|                 |        |         |                      |  |  |             |  |  | RELATIONSHIP         |  |  |
|                 |        |         |                      |  |  |             |  |  | NAME ADDRESS         |  |  |
|                 |        |         |                      |  |  |             |  |  |                      |  |  |
| WHETHER         |        |         | IN EXAMINE FILE OR   |  |  | CR          |  |  | IN ACTION            |  |  |
| (YES) NO        |        |         | (YES) NO             |  |  | (NONE)      |  |  | Bench warrant direct |  |  |
| + 0             |        |         | GRANTED              |  |  | PUB DEF     |  |  | PVT ATTY             |  |  |
| YES NO          |        |         | YES NO               |  |  | YES NO      |  |  | WARRANT OFFICE       |  |  |
|                 |        |         |                      |  |  |             |  |  | YES NO               |  |  |
| COMMENTS        |        |         |                      |  |  | INTERPRETED |  |  | HILAS                |  |  |
|                 |        |         |                      |  |  |             |  |  | YES (NO)             |  |  |



**RIGHTS OF THE ACCUSED**  
**PRETRIAL RELEASE: AKA "BAIL"**

PROJECT REMAND/RAMSEY COUNTY PRETRIAL SERVICES

**FRED F. BAIL EVALUATION**

FEL GM M PM CRIM THAF CELL A-1  
 DIV. 1 2 3 4 5 6  
 Court Dates 5/23/91 (aka)  
 Screener Baye  
 Booking Time & Date 5/12/91  
 DOB 09/22/71 SEX M RACE W  
 ADDRESS [REDACTED] W/WHOM Parents  
 HOW LONG 3 MEETINGS 14 yrs.  
 HOW LONG 0 MEETINGS life

CHARGES 1-DWI/Over 1098 BAC/Over 1098 2-ltrs/Center Ln  
 (Blood alcohol Level) 0.328  
 SGL MAR DIV SEP WID  
 DEPENDENTS NO & AGE ATTENDED? YES NO ADDRESS/PHONE SUPPORT YES NO AMOUNT  
 EMPLOYER Bilchir Engineering, Bloomington, IL HOW LONG 6 mos.  
 UNEMPLOYED 6/2/65 PREVIOUS EMPLOYER  
 NET WAGE 12.65/hr.  
 SUPPORT UC AFDC GA MEED SSI PENSION FAMILY NVMS OTHER AMOUNT HOW LONG  
 STUDENT LEARNING DISABILITIES SPECIAL NEEDS MILITARY YEARS DISCH  
 CARE OF PHYSICIAN LAST TIME Acne MDS PREGNANT 65 OR OLDER  
 YES NO OWN AUTO MAKE & YEAR OWN RENT R&B VALUE LG ASSETS  
 YES NO BEER 2 or 3 times per year PROBLEMS CONCERNS  
 YES NO D-no D-no  
 CD PSYCH TX EVAL NONE WHERE WHEN LENGTH COMPLETION

| SP          | INJURY       | CONVICTIONS              | DISPOSITION |
|-------------|--------------|--------------------------|-------------|
| <u>SP</u>   | <u>Clear</u> |                          |             |
| <u>BAC</u>  | <u>Clear</u> |                          |             |
| <u>Teaf</u> | <u>4 PMs</u> | <u>From '87 to 10/89</u> |             |
| <u>Henn</u> | <u>Clear</u> |                          |             |
|             |              |                          |             |
|             |              |                          |             |
|             |              |                          |             |
|             |              |                          |             |
|             |              |                          |             |

PENDING CHARGES HOLDS BAIL OR NONE LOCATION BAIL AMT COURT DATE  
 PROB. PAROLE REMAND NONE AGENT/PHONE/LOCATION CONTACTED YES NO  
[REDACTED] above Dad  
[REDACTED] Bloomington, IL  
 VERIFIED YES NO RECOMMEND OR YES NO CR NONE REASON  
 TOTAL 19 GRANT OR YES NO PVT ATTY WARRANT OFFICE YES NO THREAT YES NO  
 COMMENTS INTERPRETER



# RIGHTS OF THE ACCUSED

PRETRIAL RELEASE: AKA "BAIL"

PROJECT REMAND/RAMSEY COUNTY PRETRIAL SERVICES

**Greg G.**

BAIL EVALUATION

FEL ☒ M ☐ PM CRIM ☐ TRAF ☐

CELL **B-11**

DIV. 1 2 3 4 5 6 **6**

Screener **Gonzalez**

Court Dates **7/15/91**

Booking Time & Date **1825/212**

|                   |                   |          |             |             |
|-------------------|-------------------|----------|-------------|-------------|
| NAME              | DOB               | SEX      | RACE        | AGE         |
| <b>[REDACTED]</b> | <b>1-24-36</b>    | <b>M</b> | <b>W</b>    | <b>5</b>    |
| ADDRESS/ZIP/APT.  | W/HIGH            | HOW LONG | HOW LONG    | HOW LONG    |
| <b>[REDACTED]</b> | <b>[REDACTED]</b> | <b>1</b> | <b>11mo</b> | <b>11mo</b> |
| PHONE             | PRIOR ADDRESS     | HOW LONG | HOW LONG    | HOW LONG    |
| <b>[REDACTED]</b> | <b>[REDACTED]</b> | <b>0</b> | <b>11mo</b> | <b>11mo</b> |

CHARGES **W- Agg Dwl** **0**

BAIL **3000** FUNDS AVAILABLE? **NO**

SGL MAR **DIV** SEP WID LENGTH SPOUSE/PARTNER EMPLOYER

DEPENDENTS **NO** & AGE **15** ATTENDED? **YES** ADDRESS/PHONE SUPPORT YES NO AMOUNT

EMPLOYER **Cokoy Art** ADDRESS/PHONE **[REDACTED]** HOW LONG **2yr**

NET WAGE **5.00** PREVIOUS EMPLOYER **[REDACTED]** HOW LONG **NO**

SUPPORT UC AFDC GA MEED SSI PENSION FAMILY **NVMS** OTHER AMOUNT HOW LONG **0**

STUDENT **YES** LEARNING DISABILITIES SPECIAL NEEDS MILITARY A AF N M R YEARS DISCH. **1-yr**

CARE OF PHYSICIAN YES **NO** LAST TIME MEDS PREGNANT 65 OR OLDER **C**

OWN AUTO YES **NO** MAKE & YEAR OWN RENT R&B VALUE LG. ASSETS

TECH/DRUG USE YES **NO** TYPES **Alch** HOW OFTEN **Weekly** COMPLAINTS **NO** PROBLEMS **NO** CONCERN **NO**

CD PSYCH TX EVAL NONE **St. Marys Lake body removed**

DATE **3-16-91** AGENCY **Alch** CONVICTIONS **Agg Dwl** DISPOSITION **above LV1**

**8-12-81** **Ramsey** **LV1/Dwl**

**"** **"** **Alch/Dwl**

**12-18-81** **BEA**

**10-12-83** **Hubbard** **Dwl / Polyg fine 500**

**DCIC** **524615311A8**

PENDING CHARGES HOLDS BAIL OR NONE LOCATION BAIL AMT COURT DATE

PROB PAROLE REMAND NONE AGENT/PHONE/LOCATION CONTACTED YES NO

VEHICLES **[REDACTED]** ADDRESS **[REDACTED]** RELATIONSHIP **friend**

VERIFIED YES NO RECOMMENDATION YES NO OR NONE REASON **1st trial**

TOTAL GRANT YES NO WARRANT OFFICE YES NO THREAT YES NO

COMMENTS **points given for threat due to 3rd Dwl in 10 yrs** INTERPRETER

**RIGHTS OF THE ACCUSED**  
**PRETRIAL RELEASE: AKA "BAIL"**

PROJECT REMAND/RAMSEY COUNTY PRETRIAL SERVICES

**Horace H.** BAIL EVALUATION

FEL ☒ GM ☐ M ☐ PM ☐ CRIM ☐ TRAF ☐ CELL ☐  
 DIV. ☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6  
 Court Dates **6-24-91**  
 NAME **[REDACTED]** DOB **5-7-73** SEX **M** RACE **B** AGE **18**  
 ADDRESS **[REDACTED]** W/WHOM **mother** HOW LONG **3**  
 PHONE **[REDACTED]** HOME ADDRESS **[REDACTED]** BIRTH DATE **6/21**

CHARGES **W- Poss w/ intent to Sell Cocaine** BAIL **-3** FUNDS AVAIL?

UCL MAR DIV SEP WID LENGTH SPOUSE/PARTNER EMPLOYER  
 DEPENDENTS NO. & AGE ATTENDED? YES NO ADDRESS/PHONE SUPPORT YES NO AMOUNT  
 EMPLOYER **UNEMPLOYED** ADDRESS/PHONE **X verifur states** HOW LONG **0**  
 NET WARE PREVIOUS EMPLOYER **Worle Readiness** **is to be applying** HOW LONG **11**  
 SUPPORT UC AFDC GA MEED SSI PENSION FAMILY NVMS **has** AMOUNT **100** HOW LONG **10**  
 STUDENT **114** LEARNING DISABILITIES SPECIAL NEEDS **A AF N M R** YEARS DISCHG  
 CARE OF PHYSICIAN YES NO LAST TIME MEDS PREGNANT 65 OR OLDER **0**  
 OWN AUTO YES NO MAKE & YEAR OWN RENT R&B VALUE LG ASSETS  
 ALCH/DRUG USE YES NO TYPES **every other day - alc** HOW OFTEN COMPLAINTS PROBLEMS CONCERN **-2**  
 CD PSYCH TX EVALI NONE WHERE WHEN LENGTH COMPLETION **due to charge/adm**

| DATE            | AGENCY                            | CONVICTIONS | DISPOSITION                            |
|-----------------|-----------------------------------|-------------|----------------------------------------|
| <b>St. Paul</b> | <b>Same as current charge</b>     |             | <b>Charge/adm</b>                      |
| <b>B.C.D.</b>   | <b>Clear</b>                      |             |                                        |
| <b>N.C.I.C.</b> | <b>Clear</b>                      |             |                                        |
|                 | <b>Def states arrested Oct 90</b> |             | <b>Juvenile charge - 10 mos Ben ST</b> |

PENDING CHARGES **HOLDS BAIL OR NONE** LOCATION BAIL AMT COURT DATE  
 PROB. PAROLE REMAND **(NONE)** AGENT/PHONE/LOCATION CONTACTED YES NO  
 VERIFIED **[REDACTED]** ADDRESS **[REDACTED]** RELATIONSHIP **[REDACTED]**

VERIFIED YES NO RECOMMEND OR YES NO CR **(NONE)** REASON **charge**  
 TOTAL **1** GRANT OR YES NO PVT. ATTY. WARRANT OFFICE YES NO THREAT YES NO **(10)**  
 COMMENTS **AKA: [REDACTED]** INTERPRETER

# RIGHTS OF THE ACCUSED

PRETRIAL RELEASE: AKA "BAIL"

PROJECT REMAND/RAMSEY COUNTY PRETRIAL SERVICES

**Ignatius I.**

BAIL EVALUATION

FEL GM ☒ PM ☒ CRIM ☒ TBAF CELL C4

DIV. 2 2 3 4 5 6

Screener Brink

Court Dates

3-29-91

Booking Time & Date 3/24/91 10:30

NAME

ADDRESS/ZIP/PT

W/WHOM

PHONE

MAJOR ADDRESS

CHARGES

W-Street Cleaning / 4w-Exp Plate / (BWI) DAR

FUNDS AVAILABLE

SGL MAR ☒ DIV ☒ SEP WID

LENGTH 4-5 yrs

SPOUSE/PARTNER

EMPLOYER

DEPENDENTS

NO & AGE

ATTENDED

ADDRESS/PHONE

SUPPORT

NO

AMOUNT

EMPLOYER/UNEMPLOYED

PREVIOUS EMPLOYER

ADDRESS/PHONE

YES

HOW LONG

HOW LONG

NET WAGE

SUPPORT

UC

AFDC

GA

MEED

SSI

PENSION

FAMILY

NVMS

OTHER

AMOUNT

HOW LONG

STUDENT

LEARNING DISABILITIES

SPECIAL NEEDS

MILITARY

YEARS

DISCHARGE

CARE OF PHYSICIAN

LAST TIME

MALES

PREGNANT

65 OR OLDER

OWN AUTO

YES

NO

MAKE & YEAR

OWN

RENT

R&B

VALUE

LG. ASSETS

ALCOHOL/DRUG USE

YES

NO

HOW OFTEN

COMPLAINTS

PROBLEMS

CONCERN

CD

PSYCH

TX

EVAL

(NONE)

WHILE WHEN LENGTH COMPLETION

DATE

AGENCY

CONVICTIONS

DISPOSITION

4-12-90

SP-Cel

Warrant, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 158th, 159th, 160th, 161st, 162nd, 163rd, 164th, 165th, 166th, 167th, 168th, 169th, 170th, 171st, 172nd, 173rd, 174th, 175th, 176th, 177th, 178th, 179th, 180th, 181st, 182nd, 183rd, 184th, 185th, 186th, 187th, 188th, 189th, 190th, 191st, 192nd, 193rd, 194th, 195th, 196th, 197th, 198th, 199th, 200th, 201st, 202nd, 203rd, 204th, 205th, 206th, 207th, 208th, 209th, 210th, 211st, 212nd, 213th, 214th, 215th, 216th, 217th, 218th, 219th, 220th, 221st, 222nd, 223rd, 224th, 225th, 226th, 227th, 228th, 229th, 230th, 231st, 232nd, 233rd, 234th, 235th, 236th, 237th, 238th, 239th, 240th, 241st, 242nd, 243rd, 244th, 245th, 246th, 247th, 248th, 249th, 250th, 251st, 252nd, 253rd, 254th, 255th, 256th, 257th, 258th, 259th, 260th, 261st, 262nd, 263rd, 264th, 265th, 266th, 267th, 268th, 269th, 270th, 271st, 272nd, 273rd, 274th, 275th, 276th, 277th, 278th, 279th, 280th, 281st, 282nd, 283rd, 284th, 285th, 286th, 287th, 288th, 289th, 290th, 291st, 292nd, 293rd, 294th, 295th, 296th, 297th, 298th, 299th, 300th, 301st, 302nd, 303rd, 304th, 305th, 306th, 307th, 308th, 309th, 310th, 311st, 312nd, 313th, 314th, 315th, 316th, 317th, 318th, 319th, 320th, 321st, 322nd, 323rd, 324th, 325th, 326th, 327th, 328th, 329th, 330th, 331st, 332nd, 333rd, 334th, 335th, 336th, 337th, 338th, 339th, 340th, 341st, 342nd, 343rd, 344th, 345th, 346th, 347th, 348th, 349th, 350th, 351st, 352nd, 353rd, 354th, 355th, 356th, 357th, 358th, 359th, 360th, 361st, 362nd, 363rd, 364th, 365th, 366th, 367th, 368th, 369th, 370th, 371st, 372nd, 373rd, 374th, 375th, 376th, 377th, 378th, 379th, 380th, 381st, 382nd, 383rd, 384th, 385th, 386th, 387th, 388th, 389th, 390th, 391st, 392nd, 393rd, 394th, 395th, 396th, 397th, 398th, 399th, 400th, 401st, 402nd, 403rd, 404th, 405th, 406th, 407th, 408th, 409th, 410th, 411st, 412nd, 413th, 414th, 415th, 416th, 417th, 418th, 419th, 420th, 421st, 422nd, 423rd, 424th, 425th, 426th, 427th, 428th, 429th, 430th, 431st, 432nd, 433rd, 434th, 435th, 436th, 437th, 438th, 439th, 440th, 441st, 442nd, 443rd, 444th, 445th, 446th, 447th, 448th, 449th, 450th, 451st, 452nd, 453rd, 454th, 455th, 456th, 457th, 458th, 459th, 460th, 461st, 462nd, 463rd, 464th, 465th, 466th, 467th, 468th, 469th, 470th, 471st, 472nd, 473rd, 474th, 475th, 476th, 477th, 478th, 479th, 480th, 481st, 482nd, 483rd, 484th, 485th, 486th, 487th, 488th, 489th, 490th, 491st, 492nd, 493rd, 494th, 495th, 496th, 497th, 498th, 499th, 500th, 501st, 502nd, 503rd, 504th, 505th, 506th, 507th, 508th, 509th, 510th, 511st, 512nd, 513th, 514th, 515th, 516th, 517th, 518th, 519th, 520th, 521st, 522nd, 523rd, 524th, 525th, 526th, 527th, 528th, 529th, 530th, 531st, 532nd, 533rd, 534th, 535th, 536th, 537th, 538th, 539th, 540th, 541st, 542nd, 543rd, 544th, 545th, 546th, 547th, 548th, 549th, 550th, 551st, 552nd, 553rd, 554th, 555th, 556th, 557th, 558th, 559th, 560th, 561st, 562nd, 563rd, 564th, 565th, 566th, 567th, 568th, 569th, 570th, 571st, 572nd, 573rd, 574th, 575th, 576th, 577th, 578th, 579th, 580th, 581st, 582nd, 583rd, 584th, 585th, 586th, 587th, 588th, 589th, 590th, 591st, 592nd, 593rd, 594th, 595th, 596th, 597th, 598th, 599th, 600th, 601st, 602nd, 603rd, 604th, 605th, 606th, 607th, 608th, 609th, 610th, 611st, 612nd, 613th, 614th, 615th, 616th, 617th, 618th, 619th, 620th, 621st, 622nd, 623rd, 624th, 625th, 626th, 627th, 628th, 629th, 630th, 631st, 632nd, 633rd, 634th, 635th, 636th, 637th, 638th, 639th, 640th, 641st, 642nd, 643rd, 644th, 645th, 646th, 647th, 648th, 649th, 650th, 651st, 652nd, 653rd, 654th, 655th, 656th, 657th, 658th, 659th, 660th, 661st, 662nd, 663rd, 664th, 665th, 666th, 667th, 668th, 669th, 670th, 671st, 672nd, 673rd, 674th, 675th, 676th, 677th, 678th, 679th, 680th, 681st, 682nd, 683rd, 684th, 685th, 686th, 687th, 688th, 689th, 690th, 691st, 692nd, 693rd, 694th, 695th, 696th, 697th, 698th, 699th, 700th, 701st, 702nd, 703rd, 704th, 705th, 706th, 707th, 708th, 709th, 710th, 711st, 712nd, 713th, 714th, 715th, 716th, 717th, 718th, 719th, 720th, 721st, 722nd, 723rd, 724th, 725th, 726th, 727th, 728th, 729th, 730th, 731st, 732nd, 733rd, 734th, 735th, 736th, 737th, 738th, 739th, 740th, 741st, 742nd, 743rd, 744th, 745th, 746th, 747th, 748th, 749th, 750th, 751st, 752nd, 753rd, 754th, 755th, 756th, 757th, 758th, 759th, 760th, 761st, 762nd, 763rd, 764th, 765th, 766th, 767th, 768th, 769th, 770th, 771st, 772nd, 773rd, 774th, 775th, 776th, 777th, 778th, 779th, 780th, 781st, 782nd, 783rd, 784th, 785th, 786th, 787th, 788th, 789th, 790th, 791st, 792nd, 793rd, 794th, 795th, 796th, 797th, 798th, 799th, 800th, 801st, 802nd, 803rd, 804th, 805th, 806th, 807th, 808th, 809th, 810th, 811st, 812nd, 813th, 814th, 815th, 816th, 817th, 818th, 819th, 820th, 821st, 822nd, 823rd, 824th, 825th, 826th, 827th, 828th, 829th, 830th, 831st, 832nd, 833rd, 834th, 835th, 836th, 837th, 838th, 839th, 840th, 841st, 842nd, 843rd, 844th, 845th, 846th, 847th, 848th, 849th, 850th, 851st, 852nd, 853rd, 854th, 855th, 856th, 857th, 858th, 859th, 860th, 861st, 862nd, 863rd, 864th, 865th, 866th, 867th, 868th, 869th, 870th, 871st, 872nd, 873rd, 874th, 875th, 876th, 877th, 878th, 879th, 880th, 881st, 882nd, 883rd, 884th, 885th, 886th, 887th, 888th, 889th, 890th, 891st, 892nd, 893rd, 894th, 895th, 896th, 897th, 898th, 899th, 900th, 901st, 902nd, 903rd, 904th, 905th, 906th, 907th, 908th, 909th, 910th, 911st, 912nd, 913th, 914th, 915th, 916th, 917th, 918th, 919th, 920th, 921st, 922nd, 923rd, 924th, 925th, 926th, 927th, 928th, 929th, 930th, 931st, 932nd, 933rd, 934th, 935th, 936th, 937th, 938th, 939th, 940th, 941st, 942nd, 943rd, 944th, 945th, 946th, 947th, 948th, 949th, 950th, 951st, 952nd, 953rd, 954th, 955th, 956th, 957th, 958th, 959th, 960th, 961st, 962nd, 963rd, 964th, 965th, 966th, 967th, 968th, 969th, 970th, 971st, 972nd, 973rd, 974th, 975th, 976th, 977th, 978th, 979th, 980th, 981st, 982nd, 983rd, 984th, 985th, 986th, 987th, 988th, 989th, 990th, 991st, 992nd, 993rd, 994th, 995th, 996th, 997th, 998th, 999th, 1000th, 1001st, 1002nd, 1003rd, 1004th, 1005th, 1006th, 1007th, 1008th, 1009th, 1010th, 1011st, 1012nd, 1013th, 1014th, 1015th, 1016th, 1017th, 1018th, 1019th, 1020th, 1021st, 1022nd, 1023rd, 1024th, 1025th, 1026th, 1027th, 1028th, 1029th, 1030th, 1031st, 1032nd, 1033rd, 1034th, 1035th, 1036th, 1037th, 1038th, 1039th, 1040th, 1041st, 1042nd, 1043rd, 1044th, 1045th, 1046th, 1047th, 1048th, 1049th, 1050th, 1051st, 1052nd, 1053rd, 1054th, 1055th, 1056th, 1057th, 1058th, 1059th, 1060th, 1061st, 1062nd, 1063rd, 1064th, 1065th, 1066th, 1067th, 1068th, 1069th, 1070th, 1071st, 1072nd, 1073rd, 1074th, 1075th, 1076th, 1077th, 1078th, 1079th, 1080th, 1081st, 1082nd, 1083rd, 1084th, 1085th, 1086th, 1087th, 1088th, 1089th, 1090th, 1091st, 1092nd, 1093rd, 1094th, 1095th, 1096th, 1097th, 1098th, 1099th, 1100th, 1101st, 1102nd, 1103rd, 1104th, 1105th, 1106th, 1107th, 1108th, 1109th, 1110th, 1111st, 1112nd, 1113th, 1114th, 1115th, 1116th, 1117th, 1118th, 1119th, 1120th, 1121st, 1122nd, 1123rd, 1124th, 1125th, 1126th, 1127th, 1128th, 1129th, 1130th, 1131st, 1132nd, 1133rd, 1134th, 1135th, 1136th, 1137th, 1138th, 1139th, 1140th, 1141st, 1142nd, 1143rd, 1144th, 1145th, 1146th, 1147th, 1148th, 1149th, 1150th, 1151st, 1152nd, 1153rd, 1154th, 1155th, 1156th, 1157th, 1158th, 1159th, 1160th, 1161st, 1162nd, 1163rd, 1164th, 1165th, 1166th, 1167th, 1168th, 1169th, 1170th, 1171st, 1172nd, 1173rd, 1174th, 1175th, 1176th, 1177th, 1178th, 1179th, 1180th, 1181st, 1182nd, 1183rd, 1184th, 1185th, 1186th, 1187th, 1188th, 1189th, 1190th, 1191st, 1192nd, 1193rd, 1194th, 1195th, 1196th, 1197th, 1198th, 1199th, 1200th, 1201st, 1202nd, 1203rd, 1204th, 1205th, 1206th, 1207th, 1208th, 1209th, 1210th, 1211st, 1212nd, 1213th, 1214th, 1215th, 1216th, 1217th, 1218th, 1219th, 1220th, 1221st, 1222nd, 1223rd, 1224th, 1225th, 1226th, 1227th, 1228th, 1229th, 1230th, 1231st, 1232nd, 1233rd, 1234th, 1235th, 1236th, 1237th, 1238th, 1239th, 1240th, 1241st, 1242nd, 1243rd, 1244th, 1245th, 1246th, 1247th, 1248th, 1249th, 1250th, 1251st, 1252nd, 1253rd, 1254th, 1255th, 1256th, 1257th, 1258th, 1259th, 1260th, 1261st, 1262nd, 1263rd, 1264th, 1265th, 1266th, 1267th, 1268th, 1269th, 1270th, 1271st, 1272nd, 1273rd, 1274th, 1275th, 1276th, 1277th, 1278th, 1279th, 1280th, 1281st, 1282nd, 1283rd, 1284th, 1285th, 1286th, 1287th, 1288th, 1289th, 1290th, 1291st, 1292nd, 1293rd, 1294th, 1295th, 1296th, 1297th, 1298th, 1299th, 1300th, 1301st, 1302nd, 1303rd, 1304th, 1305th, 1306th, 1307th, 1308th, 1309th, 1310th, 1311st, 1312nd, 1313th, 1314th, 1315th, 1316th, 1317th, 1318th, 1319th, 1320th, 1321st, 1322nd, 1323rd, 1324th, 1325th, 1326th, 1327th, 1328th, 1329th, 1330th, 1331st, 1332nd, 1333rd, 1334th, 1335th, 1336th, 1337th, 1338th, 1339th, 1340th, 1341st, 1342nd, 1343rd, 1344th, 1345th, 1346th, 1347th, 1348th, 1349th, 1350th, 1351st, 1352nd, 1353rd, 1354th, 1355th, 1356th, 1357th, 1358th, 1359th, 1360th, 1361st, 1362nd, 1363rd, 1364th, 1365th, 1366th, 1367th, 1368th, 1369th, 1370th, 1371st, 1372nd, 1373rd, 1374th, 1375th, 1376th, 1377th, 1378th, 1379th, 1380th, 1381st, 1382nd, 1383rd, 1384th, 1385th, 1386th, 1387th, 1388th, 1389th, 1390th, 1391st, 1392nd, 1393rd, 1394th, 1395th, 1396th, 1397th, 1398th, 1399th, 1400th, 1401st,

**PRETIRAL RELEASE: AKA "BAIL"**

## BAIL EVALUATION

## PROJECT REMAND/RAMSEY COUNTY PRETRIAL SERVICES

FEL GM M PM GRIM TRAF

CELL 125

DIV. / 1 2 3 4 5 6

Screeners [Signature]

Court Dates 07-14-81

Booking Time & Date 17/5/2020

|      |            |     |         |     |   |      |   |     |    |
|------|------------|-----|---------|-----|---|------|---|-----|----|
| NAME | [REDACTED] | DOB | 8-18-54 | SEX | M | RACE | W | AGE | 34 |
|------|------------|-----|---------|-----|---|------|---|-----|----|

ADDRESS/ZIP/CITY/STATE/ZIP

| FILE NO.   | ORIGIN ADDRESS | HOW LONG   | DATE       | METHOD     |
|------------|----------------|------------|------------|------------|
| 100-100000 | 100-100000     | 100-100000 | 100-100000 | 100-100000 |

|         |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     |
|---------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| CHARGES | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

| SGI | MAR | DIV | SEP | WID | LENGTH | SPOUSE/ANYHER | EMPLOYER |
|-----|-----|-----|-----|-----|--------|---------------|----------|
|-----|-----|-----|-----|-----|--------|---------------|----------|

| DEPENDENTS | NO. & AGE | ATTENDED?<br>YES NO | ADDRESS/PHONE | SUPPORT<br>YES NO | AMOUNT |
|------------|-----------|---------------------|---------------|-------------------|--------|
|            |           |                     |               |                   |        |

| EMPLOYED | ADDRESS/PHONE | HOW LONG |
|----------|---------------|----------|
| 1-2-1    |               |          |

| NET WAGE | PREVIOUS EMPLOYER | HOW LONG |
|----------|-------------------|----------|
|          |                   |          |

| SUPPORT | OTHER | AMOUNT | HOW LONG |
|---------|-------|--------|----------|
|         |       |        |          |

|       |                       |               |      |     |         |        |        |          |       |           |
|-------|-----------------------|---------------|------|-----|---------|--------|--------|----------|-------|-----------|
| 06    | AFSC                  | SA            | WEEK | SSN | VERSION | FAMILY | RECORD | DATE     | BY    |           |
| STUDY | LEARNING DISABILITIES | SPECIAL NEEDS |      |     |         |        |        | MILITARY | YEARS | DISCHARGE |

| DATE OF PHYSICIAN | LAST TIME | MLDS |
|-------------------|-----------|------|
|-------------------|-----------|------|

|          |             |          |             |
|----------|-------------|----------|-------------|
| YES      | NO          | PREGNANT | ON OR SEDEN |
| OWN AUTO | MAKE & YEAR | VALUE    | L.G. ASSETS |

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| YES             | NO     | 89        | 37       | OWN      | RENT    | RENT |  |  |
| APPROPRIATE USE | STORES | HOW OFTEN | COMMENTS | PROBLEMS | CONCERN |      |  |  |

YES/NO H/C G.C.C. (H/C)

CD PSYCH TX EVAL NONE

| DATE | AGENCY | CONVICTIONS | DISPOSITION |
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| PENDING CHARGES | LOCATION | BAIL AMT | COURT DATE |
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| PROB.     | TANCE          | REMAND         | NONE           |         | YES            | NO           |
|-----------|----------------|----------------|----------------|---------|----------------|--------------|
| VERIFIERS | <del>NON</del> | <del>NON</del> | <del>NON</del> | ADDRESS | <del>NON</del> | RELATIONSHIP |

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| (YES) NO | YES NO | CR     | NONE   |
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| GRAND    | GRAND  | BUS    | BUS    |
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| OFFICE   | OFFICE | OFFICE | OFFICE |
| BUS      | BUS    | BUS    | BUS    |

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| YES | NO | YES | NO | YES | NO | YES | NO |
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Minnesota Center for Community Legal Education  
Hamline University School of Law

29-25

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**What Is Cruel and Unusual?**  
by Pam Leindecker

This lesson is designed to help students understand the 8th Amendment to the Constitution and how the Supreme Court Justices can make decisions when interpreting the Constitution. This is a group role-play activity.

Students will:

1. Become familiar with the 8th Amendment.
2. Learn what a majority and dissenting opinion are.
3. Learn what it means to interpret the Constitution by doing it.

**Materials needed:** Copies of: **EIGHTH AMENDMENT** (one per group)  
( See Appended Materials)  
**Student Handout: LOUISIANA EX REL. FRANCIS V. RESWEBER**

**Time needed:** One hour

**Grade level:** 9th - 12th grades

**Procedure.**

1. The lesson should begin with a discussion about the 8th Amendment and feelings about capital punishment. Explain that the court has had a difficult time interpreting just what is "*cruel and unusual*."
2. Tell the students that they are to roleplay Supreme Court justices and attempt to interpret those words.
3. Assign students to groups of 5-7 justices and ask them to choose one Chief Justice who will act as spokesperson for the group.
4. Explain to the students that they will be simulating an appellate conference which is the gathering of the judges after hearing oral arguments during which time they discuss the case, present preliminary thoughts and opinions, and determine how many judges are planning to vote for each side (the *majority* and the *minority*, or *dissenting*, positions are determined).



**RIGHTS OF THE ACCUSED**  
**WHAT IS CRUEL AND UNUSUAL** \_\_\_\_\_

**Procedure cont.**

5. Instruct students that when in conference, they are to first discuss the case presented. Then each student will write one paragraph explaining his or her interpretation based on the case given. Using this information, the students will be able to determine if they have written majority or dissenting opinions. They should write that on the top of their opinions.

6. In the last 10-15 minutes of class ask each Chief Justice to share what their court decided and what the vote was. Inform them at the end that in 1947 the Court said a second trip to the electric chair is not cruel and unusual punishment.

**RIGHTS OF THE ACCUSED**  
**WHAT IS CRUEL AND UNUSUAL** \_\_\_\_\_

**Student Handout: *Louisiana ex rel. Francis V. Resweber***  
**Cite: 67 S.Ct. 374**

*Louisiana ex rel. Francis v. Resweber* was decided in 1947. Willie Francis had been convicted of a capital crime. His execution day came and he was placed in the electric chair. The power was turned on but Francis did not die. He then appealed to the Supreme Court asking them to not allow the execution to go on because a second trip to the electric chair would constitute cruel and unusual punishment.

## RIGHTS OF THE ACCUSED

### EQUAL PROTECTION OF THE LAW: FACT OR FICTION \_\_\_\_\_

## Equal Protection of the Law: Fact or Fiction

by Cecil Ramnaraine

#### Students will:

1. Explore whether or not racism denies citizens of their rights under the 14th Amendment to the Constitution

**Materials needed:** Copies of: **Bill of Rights** (See Appended Materials)  
**Student Handout: *BROWN V. TOPEKA BOARD OF EDUCATION***  
**Student Handout: STATISTICAL STUDY ON IMPOSITION OF THE DEATH PENALTY**  
**Student Handout: STUDY SHEET ON *EVERY TWO SECONDS***

16mm Film *Every Two Seconds*

**Time needed:** 1 week

**Grade level:** 9th - 12th grades

#### Procedure:

1. Students read the Bill of Rights paying special attention to the 14th Amendment. Students discuss it with teacher's help.
2. Students study **Student Handout: STATISTICAL STUDY ON IMPOSITION OF DEATH PENALTY** and **Student Handout: *BROWN V. TOPEKA BOARD OF EDUCATION*** and discuss them both, paying attention to the finding that segregation in public schools is inherently unequal and in violation of the equal protection of the laws. Have students discuss their opinions as to whether minorities are equally treated as guaranteed by the 14th Amendment.
3. View the movie *Every Two Seconds*.
4. Distribute **Student Handout: STUDY SHEET ON *EVERY TWO SECONDS***. Have the students complete; discuss and exchange opinions on the movie. Teacher should assist where necessary.

## RIGHTS OF THE ACCUSED

### EQUAL PROTECTION OF THE LAW: FACT OR FICTION \_\_\_\_\_

#### Procedure cont.

5. Teacher asks for student's evaluations as to whether the minority population in the movie received equal treatment.
6. Debate *"Minorities, black men in particular, are deprived of equal protection under the law."*
7. **Optional Activity:** Field trip to the Hennepin County Juvenile Detention Center, 400 Park Avenue, Minneapolis.
  - A. Students interview detainees at the Juvenile Detention Center; 6 white detainees and 6 black detainees in order to compare the way in which they were treated by law enforcement authorities.
  - B. Students write their own findings and submit and share their conclusions. They must determine whether or not they found discrimination, prejudice and unequal treatment.
8. An alternative or extra field trip: Arraignment Court in Ramsey or Hennepin County to view adult court and disposition of cases by a judge. Students can study the statistics of the day's cases and the manner in which they were settled, drawing some conclusions.
9. Class evaluates their individual and collective findings and draw some conclusions.

## RIGHTS OF THE ACCUSED

### EQUAL PROTECTION OF THE LAW: FACT OR FICTION \_\_\_\_\_

#### Student Handout: **STUDY SHEET ON EVERY TWO SECONDS**

1. At the very start of the movie what statistics were quoted? Why?
2. How many suspects were women? White men? Black men? Why the disparity?
3. How many police officers were women? White men? Black men? Why the disparity?
4. Describe the men accused of rape. Draw some conclusions as to why they did it.
5. What reasons were given for the repetition of crimes? Do you agree?
6. About 20% of the U.S. population is black, of whom about half are men. What percent did black men represent of those accused of crime in the film? Why such a large percentage?
7. From viewing this movie, draw a profile of the habitual average criminal. Give reason why you agree or disagree with this profile.
8. List at least six reasons why people engage in crime.
9. List at least six reasons why black men engage in crime.
10. Advance some solutions to the crime problem in the U.S.; especially as it relates to juveniles and minorities.



## RIGHTS OF THE ACCUSED

### EQUAL PROTECTION OF THE LAW: FACT OR FICTION

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#### Student Handout: STATISTICAL STUDY ON THE IMPOSITION OF THE DEATH PENALTY

In *McCleskey v. Kemp* (1987), the U.S. Supreme Court considered an appeal of a black defendant sentenced to the death penalty in the state of Georgia. In his defense, the defendant asserted the findings of a study done by Professors Baldus, Woodworth, and Pulaski (referred to as the Baldus study) which claims to show a disparity in the imposition of the death sentence in Georgia based on the race of the murder victim, and to a lesser extent, the race of the defendant. The Baldus study is actually two statistical studies that examined over 2,000 murder cases that occurred in Georgia in the 1970s.

The numbers collected through the study indicated:

1. defendants charged with killing white persons received the death penalty in 11% of the cases.
2. defendants charged with killing black persons received the death penalty in 1% of the cases.
3. 4% of black defendants received the death penalty.
4. 7% of white defendants received the death penalty.
5. in cases involving black defendants and white victims, 22% of the defendants received the death sentence.
6. in cases involving white defendants and black victims, 3% of the defendants received the death sentence.
7. in cases involving black defendants and black victims, 1% of the defendants received the death sentence.
8. in cases involving white defendants and white victims, 8% of the defendants received the death sentence.

In addition, prosecutors sought the death penalty in:

1. 70% of the cases with black defendants and white victims.
2. 32% of the cases with white defendants and white victims.
3. 15% of the cases with black defendants and black victims.
4. 19% of the cases with white defendants and black victims.

Although the Court did not question the validity of the study, it did find that the defendant failed to prove that race had entered into his case. The Court said that statistics alone show only a likelihood that a particular factor entered into some decisions, not that it in fact played a role.

## RIGHTS OF THE ACCUSED

### EQUAL PROTECTION OF THE LAW: FACT OR FICTION

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#### Student Handout: **BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS (1954)**

Linda Brown was an eleven-year-old black girl growing up in a poor neighborhood in Topeka, Kansas. Linda had been a student at Monroe School, which was a mile from where she lived, for the first and second grade. When she began third grade, her father brought her to Summer School, which was closer to her home, on a pleasant tree-lined street. Although the school was very nice, Linda could sense that her father was uneasy about taking her there. After entering the all-white school, Linda and her father were told to report to the principal's office. Linda waited outside while her father talked with the principal. Moments later, he walked Linda out of the school. The principal had told him that she could not attend the Summer school. She was black, and the city had a rule that required that she attend a black school. Linda's parents decided to sue the school on the grounds that she was not receiving an equal education in her all-black school.

This lawsuit challenged that law that had been decided in the 1896 case of *Plessy v. Ferguson*, stating that separate but equal facilities were legal under the U.S. Constitution.

The Supreme Court agreed with Linda and her parents. The Court's opinion began: *"In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a non-segregated basis. . . The plaintiffs contend that segregated public schools are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."*

Chief Justice Warren, writing for the court, summed up the case by saying *"We come then to the question presented. Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal education opportunities? We believe that it does . . . Separate educational facilities are inherently unequal."*

**Allen's Dilemma**  
by Gerald Vitalis

The lesson is an actual case study where the completion of the case could include a mock trial, role playing and critical thinking questioning.

**Students will:**

1. Learn to read and discuss an actual case study
2. Role play the conclusion of the case history
3. Use critical thinking to discuss the case
4. Better understand the legal system in dealing with juvenile crime.

**Materials needed:** Copies of: **Student Handout: CASE STUDY**  
**Student Handout: DISCUSSION QUESTIONS**

**Time needed:** 2 -3 class periods depending on the options selected to complete the lesson

**Grade level:** 4th - 12th grades

**Procedure:**

1. Have the students read the **Student Handout: CASE STUDY**. Length of time depends on age group, length of period and style of reading. Tell students the Case Study is based on an actual case, but the facts have been altered to protect the identity of Allen. (In writing this Case Study, Mr. Vitalis interviewed eight of the people directly involved in Allen's life; Allen, juvenile professionals, members of the community, Allen's employer, and school personnel.)

2. Conclude the lesson by telling the students that there is no resolution to this case study. The drama of Allen's life continues. Tell them that they are going to imagine what might happen next in Allen's life.

## **RIGHTS OF THE ACCUSED**

### **ALLEN'S DILEMMA**

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#### **Procedure cont.**

3. Conduct a mock trial on the criminal assault. Assign individuals to role play the people who were involved in Allen's life. Also select individuals who will role play the people who attended the party. Several students can be assigned to play the roles of prosecuting and defense attorneys.

4. **Alternative activity:** Divide the class into three groups. One group will role play county attorneys, one group will role play the defense, and one group will role play the judges. Provide the county attorneys and the defense lawyers with time to prepare their arguments. Then have them argue their case to the judges. Using the evidence presented by the two sides, the judges will make a decision about Allen's charge of criminal assault.

5. Conclude by exploring the case further using the critical thinking and open-ended questions included in the **Student Handout: DISCUSSION QUESTIONS**

## **RIGHTS OF THE ACCUSED**

### **ALLEN'S DILEMMA**

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#### **Student Handout: CASE STUDY**

From his earliest memory, Allen's mother was a source of frustration and embarrassment to him. She had severe mental problems that caused her to do bizarre things whenever there were people around, especially strangers. Because of her condition, Allen had been placed in several foster homes by age six.

Born and raised in a small rural town, Allen never met his father or even knew if he was still alive. He was the only child although his mother was from a large family. His mother had been institutionalized many times due to her mental condition, and she also had problems with alcohol. Her personal problems prevented her from holding a steady job.

As so often happens in a small town, there wasn't much for young people to do after school, weekends and especially during school vacations. While other kids his age were involved in after school activities, organized events or family get-togethers, Allen watched hours of television or roamed the streets.

Allen was very intelligent but never liked school from day one. He started to fall behind because he was absent so often and when he was in school, he was often in trouble. Good students didn't want to be around him because they were afraid he would get them in trouble. The kids he started to hang around with had the same bad habits as Allen such as skipping school, tardiness, verbal battles with the teachers, being sent to the principal's office, and so on.

When Allen was five years old he would go shopping with his mother and ask for candy, pop, and especially small race cars. Allen loved race cars. His mother would tell Allen they couldn't afford to buy these things so he should take them off the shelf and when no one was looking she would hide them in her purse. This became a regular occurrence whenever they went shopping.

When he was eight years old, Allen and his friends would walk around after school checking vending machines, phone booths and newspaper machines for forgotten change. Now there is nothing wrong with checking machines, except they became interested in ones that were just inside shops and businesses. So they were inside the stores, and while one of them was detaining the store owner, another was shoplifting candy, pop and of course, small race cars. Although the shopkeepers were suspicious of Allen and his friends, they never had enough evidence to call the police. An interesting side light was that Allen and his friends did their shoplifting after school hours so the shop owners wouldn't become suspicious of them skipping school.

When Allen was eleven years old, he had his first contact with the local police. There were reports that streetlights were being knocked out by rocks. Also street signs had been bent, and mailboxes had been damaged.

One Saturday night well after midnight a man was walking his dog when he spotted Allen breaking a street light. Because it was on his block and he was close to home, the man went into his house and called the police. Within minutes, the police were on the scene and were questioning Allen about the incident. When Allen realized there was a witness, he confessed to the broken lamp. The police filed a Juvenile Contract report and took Allen



## RIGHTS OF THE ACCUSED

### ALLEN'S DILEMMA

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#### Student Handout: CASE STUDY cont.

home to explain the seriousness of the situation. The mother promised to talk to Allen and make sure he was off the streets by 10:00 P.M.

Shortly after this incident, Allen's mother was hospitalized for her emotional condition and Allen was placed in another foster home. Within a month Allen's mother was home again, and Allen returned home.

Soon Allen was feeling neglected, and because his mother was often away at night, Allen was again on the streets and in trouble.

Allen was twelve when he was caught vandalizing a car by flattening the tire and breaking off the aerial and windshield wiper. This time the police reported the crime to the district attorney. The district attorney chose to use an informal proceeding called diversion. Through diversion an agreement is made with the parents and probation officer where restitution or payback is made for the crime committed. In Allen's case it was agreed that Allen would work ten hours of community service. Allen was assigned to do some yard work at the high school under the supervision of the janitor.

Later that year, Allen was questioned about some damage done on Halloween night. A teacher's house was spray painted with obscene words, a window was cracked and some pickets on a fence were broken. Allen had been overheard threatening the teacher for putting pressure on him to get his school work finished. Allen and his friends were seen around the house shortly before the destruction. However, since no one actually saw them do it, they were questioned and released. When questioned Allen was very sarcastic because he was always being suspected of anything that happened around town. The police reminded him that when anything happened around town Allen "was" usually involved.

When Allen was fourteen, he hot-wired a car and stole it. While he was driving around, he lost control, and the car went into the ditch. Allen had some minor injuries, but the car was destroyed. Due to the seriousness of the crime, the county attorney petitioned Allen to appear in court with his mother. On the morning of the trial, Allen showed up in court but his mother never appeared. Because of the inability of the mother to supervise him, Allen was kept in a juvenile detention center until a foster home could be found. The court stated that he should be in the foster home during the week with visitation rights to his mother every weekend. During the weekends Allen roamed the streets until the wee hours of the morning. Although he didn't get in any trouble with the law, this made it more difficult to work with Allen during the week. About a month later, Allen got into an argument with his foster parents over his unauthorized use of a car and he ran away.

For the first time, Allen was on the run. He spent some time with relatives, but the ones he chose had emotional or alcohol problems like his mother. Staying in the homes of friends didn't help either because some of their homes weren't much more stable than his own. Finally, after bouncing around from place to place, Allen moved home with his mother.

Allen turned fifteen and began to realize that the stress of living from house to house was getting to him. He also realized that when he would drink alcohol, life's pressures didn't

## RIGHTS OF THE ACCUSED

### ALLEN'S DILEMMA

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#### Student Handout: CASE STUDY cont.

bother him nearly as much. What he didn't understand was that when he drank he no longer was in control. This caused him to do strange things. There was plenty of opportunity for Allen to get alcohol because it was always around the house or his friends had some.

One summer evening after Allen had been drinking he began walking the streets until he was reasonably sure that all the stores were closed. At about 11:30 p.m., he broke the window of the fast-food store taking about forty dollars in cash and doing about four hundred dollars worth of vandalism. Once again, he found himself in court convicted of theft and vandalism. This time his mother showed up in court with a new boyfriend and claimed that Allen now had a stable home to live in. The court awarded custody to the mother and ordered Allen to pay for the damages to the store.

Two months later, Allen turned sixteen and needed a job immediately because the court was putting pressure on him to pay back the debt to the fast-food store. When Allen asked a restaurant owner for a job, he was asked why anyone would want to hire him with the reputation he had already earned. Allen said that he needed the job to separate himself from his past and to pay off bills. The owner must have been convinced because Allen got the job. Allen surprised everyone with his responsible attitude and hard work. For the first time, Allen said he felt good about himself and realized that there were people out there who really cared about him. He also longed to be independent from people who had helped lead him astray.

However, one night Allen decided to have a party in the basement of his house. Word spread fast that a party was in progress, especially among Allen's friends. As the party progressed so did the noise from the house. Neighbors called the police because of the noise. When the police arrived they asked the mother about the party. She said she didn't see anything wrong with it. After all, at least Allen was home rather than running the streets. When the mother was asked if there was alcohol at the party, she told them it was none of their business. As the party grew louder, Allen's mother and boyfriend started warning them to keep the noise down. By this time, Allen had finished several drinks and was feeling very brave. The boyfriend had finally had enough. He went down to the basement and got into a verbal battle with Allen. Soon the boyfriend and Allen were pushing each other around. The boyfriend picked up a pipe wrench and threaten to hit Allen. In a rage, Allen picked up a brick and threw it at him. The brick struck him on the side of the face causing a three inch cut and knocking him to the floor. The boyfriend immediately called the police. The police arrested Allen and took him to a detention center for the night.

The next morning, Allen was back in court. His mother was there with the boyfriend who had filed a complaint against Allen for criminal assault. The judge appointed an attorney to defend him, and Allen pleaded not guilty. A trial was scheduled for two weeks later. During the interim, Allen was held in a locked detention center.

At the trial the county attorney argued that Allen should be put in an institution because he was a danger to the citizens of the community and was becoming a danger to himself. He pointed out that Allen's involvement had gotten steadily worse, ending with the criminal assault. He continued to argue that since the mother was incompetent and Allen had run from

**RIGHTS OF THE ACCUSED**  
**ALLEN'S DILEMMA**

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**Student Handout: CASE STUDY cont.**

a foster home, an institution was the best place for him.

The defense attorney appointed to defend Allen argued that Allen never had a fair chance. He stated that because Allen found a job, was good on the job, and wanted a job to pay for his past mistakes, there was proof that Allen was turning the corner. The defense attorney stated that because of the kind of home life Allen had, he needed another chance under conditions where the mother would lose permanent custody and he would be placed in a foster home. He concluded that by placing Allen in an institution with people who have committed far more serious crimes, he would become more like them.

**RIGHTS OF THE ACCUSED**  
**ALLEN'S DILEMMA** \_\_\_\_\_

**Student Handout: DISCUSSION QUESTIONS**

- 1.** If you were the judge, what are some of the factors you would consider in making a decision?
- 2.** Do you agree with the county attorney's decision to use diversion when Allen was caught vandalizing a car? Why or why not?
- 3.** Follow the problems Allen had and note how they become steadily more severe. What do you think should have been done the first time Allen was in trouble with the law?
- 4.** How could Allen's life have changed if something different would have been tried.
- 5.** How did the home fail in its responsibility to Allen?
- 6.** How did Allen fail in his responsibility to himself?
- 7.** How did the law enforcement agencies and community fail in their responsibilities to Allen?
- 8.** Discuss some reasons why Allen's life developed as it did.
- 9.** What really went wrong in Allen's life?
- 10.** There are thousands of Allens out there. What needs to change to prevent Allen's story from happening?

**Draw the Line: Public Safety v. Amenability to Treatment**  
**A Juvenile Case**  
by Lynn Gresser

When is a juvenile prank or teenage act of vandalism "*too much*" for the tolerance of the victim and the community? When is society's desire to see the juvenile be rehabilitated and helped by the juvenile court system exceeded by fears for public safety and desires to stop an upward spiral of violent, juvenile criminal behavior? This role play activity provides students an opportunity to examine the complex issues and emotions involved in determining certification of a juvenile to adult court.

**Students will:**

1. Practice small group skills while analyzing points of view and re-formulating them into arguments and questions appropriate to designated roles.
2. Use knowledge of their community and current events to help determine how they will play roles.
3. Discover that the issue of determining certification is neither one-sided nor unambiguous.

**Materials needed:** Copies of: **Student Handout: DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT**  
**Student Handout: STATUTE INFORMATION**

**Time needed:** 2 days

The scenario should be read to/with students and roles assigned the last half of class on the first day of this activity. Students should think about their assigned role overnight.

The second day students, working in various configurations of groups, will use an entire class period.

**Grade level:** 9th - 12th grades

**Procedure:**

**Day One:**

1. Teacher distributes scenario and statute information to students and reads it to them/with them.
2. Teacher and students quickly clarify: who, what, where, when, how, when, etc., in sequential order. This should be done on the board, transparency, or flip chart.



## **RIGHTS OF THE ACCUSED**

### **DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT** \_\_\_\_\_

#### **Procedure cont.**

3. Students should quickly be divided by counting off by fours. Ones will be the judges. Twos are members of the victim's family/friends. Threes represent the adult and youth interests of the community where the incident takes place and the four juvenile suspects live. Fours are concerned with the needs and best interests of the juvenile suspects.

4. Overnight, students should think about the interests and issues they will represent in the next day's roleplay. Students should frame an imagined person's life, experiences, and attitudes in their heads. For example: How does the judicial experience and attitudes of the judge impact her/his decision? If the student represents a family member of the victim, what are the vital concerns? If the student represents the community, what are their particular interests and issues? What are the concerns of those representing the needs and best interests of the juvenile suspects?

#### **Day Two:**

1. To begin the activity, all the ones will get together in one group, all the twos in a second group, etc. Members of each group should collectively identify issues, questions, areas of concern pertinent to the group members' role. Group one (judges), for example, should work together to formulate questions for each of the groups that will help the judge clarify the issue and make a decision about certifying the juveniles to adult court. Students in groups two, three, and four may have multiple areas of concern. For example, some threes (adult and youth interests of the community where the incident takes place) might know the involved juveniles or their families. Other threes may choose to define their roles as not knowing the juveniles. Community members may or may not have known about previous acts of vandalism and/or prior incidents of dropping rocks off the overpass. Students in groups two and four should similarly try to identify various factions/points of view within the group. Students in groups two, three, and four must decide what points of view or areas of concern they will be raising with the judge as they try to influence her/him in making a decision about certifying the juveniles to adult court. This task should take about ten minutes.

2. Next, students are re-configured into new groups, each with a number one, two, three and four. Numbers two, three and four each have five minutes to make a short presentation to the judge. Other group members should listen quietly and perhaps take some notes for later response. During the presentation, the judge may ask questions to clarify. This is **NOT** an appropriate time for debate nor for interaction among group members. The object is, acting within a role, to persuade the judge towards a particular viewpoint and subsequent action.

3. To bring closure to the activity, numbers two, three, and four could respond to remarks of another group member, ask a question of one of the other group members, or make a last

## RIGHTS OF THE ACCUSED

### DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT \_\_\_\_\_

#### Procedure cont.

statement to the judge. Students could be given the option of seeing if they can form some type of coalition or reach some sort of settlement to be presented to the judge for consideration. Judge may ask one question of each of the three group members. This part of the activity should take no more than 5-8 minutes.

4. The judge has a minute or two to decide whether or not to certify the juveniles to adult court and to determine reasons for the decision. The entire class is re-united, and each of the judges gives the decision and reasons. A tally/list of reasons could be kept on the board. This should take about 7-10 minutes.

5. To debrief, students and teacher should determine the most often chosen course of judicial action and the most often repeated reasons for such a choice. Reasons could be rank ordered based on frequency. Students should be asked to evaluate how the judges' choices balanced the community's desire to rehabilitate the juveniles and their amenability to successful treatment in the juvenile system against the need for public safety and stopping violent juvenile crime. Students could be asked: If all of you represent the community's interests, how many would recommend certification to adult court? How many would not? If you represent the victim's family and friends, how many would recommend certification? How many would not? If you represent the juvenile offenders, how many would recommend certification? How many would not? Students could be asked what will be gained for the individuals concerned and society as a whole by each viewpoint.

6. As a concluding activity, each student could pretend to be the judge and, as homework, write a decision and provide reasons. A more challenging end activity is for each student to resume their assigned role (1,2,3,4) and write a page or two on what would be the worst possible decision that could be made for their particular role's interests and concerns, outlining why it is the most harmful choice and perhaps to which other roles it might be most appealing.

7. A twist to this activity would be to have the victim be a community member in some of the roleplays and in other roleplays, have the victim be from out-of-town or out-of-state. Depending on the outcomes, the students and teacher might want to explore differences in the judges' decisions that seemed to be based or influenced by the home location of the victim. For example, if the victim lived in the same neighborhood, perhaps her children are friends with the accused juveniles.

8. If available and practical, this activity lends itself to the use of outside resource persons working with small groups. A judge, crime victim advocate or crime victim, former juvenile offender and community activist/representative would all be good choices.

## RIGHTS OF THE ACCUSED

### DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT \_\_\_\_\_

#### Student Handout: DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT

Summer had turned *"boring."* Four local juveniles gathered late Saturday night on the overpass west of town to drop rocks, obtained from a nearby landscap company, on cars and trucks passing on the freeway below. Questioned later, the juveniles said it was "fun" to hear the rocks hit and bounce off the passing vehicles. The prank turned tragic when a passing motorist, Susan White Smith, was killed when a 30 lb. rock came crashing through the windshield of her car, striking her in the chest and killing her. White Smith's husband, riding in the passenger seat, was able to bring the car to a stop along the shoulder of the road. He administered CPR until an ambulance, called by a passing motorist, arrived. White Smith was pronounced dead at the scene.

According to police reports, there had been several motorist calls that night during the half hour preceding White Smith's death. Motorists reported rocks and unidentified objects being dropped from the overpass. Police were on their way to the overpass when the call for the ambulance for White Smith was received. Police found no one on or near the overpass. The only witness was White Smith's husband who said the rock came through the windshield without any warning. White Smith's two teenage children, age thirteen and sixteen, were at home at the time of the accident.

Close to the overpass is a residential neighborhood. Police, in door-to-door questioning of over one hundred residents, received multiple reports of vandalism and thefts over the past month. Many of the residents making these reports named the same four teenagers. None of the residents had made any reports to the police before this. Residents indicated that they weren't *"100% sure,"* didn't want to cause trouble for the juveniles' parents and families, or feared reprisals from the four teenagers. A number of the persons questioned said they had heard *"neighborhood rumors"* that the four teenagers had been dropping rocks off the overpass during the last month. According to the neighbors, there had been no or only minor damage from such incidents and no one had called the police. White Smith's death scared and disturbed a number of those questioned.

The four named juveniles were questioned by police, following all appropriate procedures. Two of the juveniles were 16, one was 15 and the fourth was 17. All admitted to being involved, although the stories were conflicting. One of the 16-year-old juveniles claimed she left the overpass before the dropping of the rock that killed White Smith. She did admit to gathering and helping to carry rocks to the overpass. Upon inspection, police found about two dozen rocks, weighing five to forty pounds each, on the roadway below the overpass.

Three of the juveniles were held in a juvenile detention facility by police. The County Attorney considered charges and whether or not to try to have the cases moved to adult court. The fourth juvenile, according to the Assistant County Attorney, wasn't on the overpass when the rock was dropped on White Smith, although she had admitted being there earlier, dropping other rocks. The other three juveniles, two males and one female told conflicting stories about

## RIGHTS OF THE ACCUSED

### DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT \_\_\_\_\_

*Student Handout: DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT cont.*

the fourth juvenile's participation. Criminal charges are pending for the 16 year-old female.

A hearing has been set for three weeks from today. All the juveniles have been placed on home detention. They cannot leave their homes unless accompanied by an adult. Parental supervision must be 24 hours a day, and unannounced checks will be made to make sure the rules are being followed by the four juveniles.



## RIGHTS OF THE ACCUSED

### DRAW THE LINE: PUBLIC SAFETY V. AMENABILITY TO TREATMENT \_\_\_\_\_

#### Student Handout: STATUTE INFORMATION

*Laws vary from state to state as to what age a juvenile may be certified to adult court. In addition to age, the court usually considers public safety and the juvenile's suitability for treatment in the juvenile system. Below is a list of some other factors that might be a consideration in a particular state. The list is not meant to be exhaustive or to fit the laws of every state. It represents some of the circumstances that might be taken into account in deciding whether or not to certify to adult court. MN Statute 260.125 and Rule 32.05 (Minnesota Rules of Court) provide more detailed information about the process and consideration.*

It must be demonstrated by clear and convincing evidence that the child is not suitable for treatment or the public safety is not served. Circumstances considered (but not limited to) include:

1. Seriousness of the offense in terms of community protection.
2. Circumstances surrounding the offense.
3. Was the offense committed in an aggressive, violent, premeditated or willful manner.
4. Whether the offense was directed against persons or property with the greater weight being given to a crime against persons, especially if personal injury resulted.
5. The reasonably foreseeable consequences of the act.
6. The absence of adequate protective and security facilities available to the juvenile treatment system.
7. The sophistication and maturing of the child as determined by consideration of a child's home, environmental situations, emotional attitude and pattern of living.
8. The record and previous history of the child.
9. Whether the child acted with particular cruelty or disregard for the life or safety of another.
10. Whether the offense involved a high degree of sophistication or planning by the child.
11. Whether there is sufficient time available before the child reaches age nineteen to provide appropriate treatment and control.



## ***Lessons in Legal Ethics: Ethical Dilemmas***

*by John Belpedio*

*Legal cases can be used to allow students an opportunity to examine societal issues and existing values conflicts that confront not only the common layman, but professionals in the legal field as well. Often, societal conflicts in our legal system involve disputes between two rival "goods".*

Values - creating an ethical dilemma for those involved in the decision-making process. Conflicts such as free press vs. fair trial; personal privacy vs. police duty; client confidentiality vs. public safety and truth vs. justice are just some of the ethical conflicts that confront the legal professional on a daily basis.

The following exercise is designed to give students a springboard for discussion of ethics, values and decisions that occur in law. Do attempt to allow students an opportunity to voice opinions, concerns and reservations in any open forum. In many of the situations, there are no right or wrong answers. However, the American Bar Association's "rules of professional conduct" have been cited as a guideline for proper behavior in situations that involve ethical conflicts.

### **Students will:**

1. Understand the importance of ethical guidelines in professional decisions.
2. Be able to express personal opinions in group discussions of ethical issues.
3. Be able to evaluate legal situations and determine appropriate behavior based on ethical standards.

**Materials needed:** Copies of      **Student Handout: ETHICAL DILEMMAS**  
**OVERHEAD: Rules of Professional Conduct**

**Time needed:**      One class period

**Grade level:**      9th - 12th grades

### **Procedure:**

1. Ask students for a definition of ethics. "*The study of the standards of conduct and moral judgement*" is a working definition that can be used so that students are talking the same language. The class should feel comfortable with the working definition before proceeding.

## RIGHTS OF THE ACCUSED

### LESSONS IN LEGAL ETHICS: ETHICAL DILEMMAS \_\_\_\_\_

#### *Procedure cont.*

2. *Ask students* how conflicts of ethics arise in the law? Accidents, theft, arguments, and *physical disputes, etc.*, are all issues that the law attempts to correct but which are ethical in *nature*.
3. *Explain to* the class that they will be working in pairs to decide how to handle situations facing a *defense attorney*. Distribute **Student Handout: ETHICAL DILEMMAS** and explain that they *are* to read each case, discuss the options with their partner and decide on the appropriate ethical decision to take. Each pair should write out the course of action and the reasoning for the decision.
4. When *pairs* have completed their task, arrange the pairs into groups of four. Allow 10-15 minutes for each group to explain its decision and reasoning in the five situations. Encourage all of the *students* to share their opinions.
5. When finished, put up **OVERHEAD: "Rules of Professional Conduct"**. Explain that in each situation there may not be a right or wrong answer, however, expected rules of conduct are generally followed and these are the rules that govern each instance.  
Go over each of the situations comparing the decisions made by the groups and the guidelines given by the American Bar Association.
6. For further study or enrichment: Students may write their own situations; clip news articles on ethical dilemmas; find examples of conflicts in magazines or television programs; and research the rules of conduct using the American Bar Association guide as a reference.

## RIGHTS OF THE ACCUSED

### LESSONS IN LEGAL ETHICS: ETHICAL DILEMMAS

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#### Student Handout: ETHICAL DILEMMAS

*Ethics: The study of standards of conduct and moral judgement.*

**Directions:** Read the following situations and decide how you would handle each ethical dilemma posed. Be prepared to explain your reasoning to one other person.

1. You have been appointed public defender for a 26 year-old man accused of sexually assaulting and murdering a 15 year-old girl. The defendant admits to you that he committed the crime, but asks you to enter a plea of not guilty with the court. What do you do?
2. Your client has been charged with driving under the influence of alcohol. He has registered a .20 in a breath test he volunteered to take upon arrest. During sobriety testing at the scene, your client stumbled and fell against the police car, injuring his head. Even though he admits to you that he fell and was not pushed; he tells you that he would like to take the stand to testify that the arresting officer used excessive force and that he was a victim of police brutality. What do you do?
3. A client has hired you to provide legal advice while she is being questioned by police in connection with an alleged kidnapping. During private consultation, she tells you the whereabouts of her 6 year-old daughter, whom she has bound and gagged and hidden in an abandoned well. She tells you that she expects to be charged for the abduction and that you are not to tell anyone of the whereabouts of her daughter until the trial is completed. What do you do?
4. Your client has been accused of first-degree assault in a brutal attack that has left the victim in a coma. The parents of the victim request that the hospital remove all means of artificial life-support to allow their son to die in dignity. Prosecution attorneys have prepared charges of murder in the event the victim dies. Your client wishes to petition against the parents request on the grounds that it would violate the right to life. What do you do?
5. You represent a client who has been arrested on a drug possession charge. In private consultation, you inquire about any prior offenses that may be connected to this charge. Your client admits to two prior convictions on drug possession and goes on to tell you about an armed robbery of a home in which an elderly woman was shot and seriously wounded. He states that he escaped from the scene and that police have arrested another man who is currently being held for the crimes. Upon further investigation, you discover that the man being held for the robbery and shooting resembles your client. What do you do?

**OVERHEAD: Rules of Professional Conduct**

**1. Rule 1.3 Diligence.** A lawyer shall act with reasonable diligence and promptness in representing a client.

**Rule 1.6 Confidentiality of information.** A lawyer may not reveal information relating to representation of a client unless the client consents after consultation.

**2. Rule 1.2 Scope of Representation. (a)** A lawyer shall abide by a client's decisions concerning a plea to be entered, whether to waive jury trial and whether the client will testify.

**Rule 1.2 (d)** A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

**3. Rule 1.6 (b)** A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

**1.** To prevent the client from committing a criminal act that the lawyer believes likely to result in imminent death or substantial bodily harm.

**4. Rule 1.2 Scope of Representation. (a)** A lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued.

**Rule 1.2 (b)** A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

**5. Rule 1.6 (a) Confidentiality of Information.** A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation.

## **Lessons in Legal Ethics: The Limits of Defense**

**by John Belpedio**

Ethical issues are often difficult to differentiate from legal issues. The legal profession monitors its own professional conduct through codes of professional responsibility. However, as with legal issues, ethics come into interpretation conflicts and many times may end up in a court of law in order to find a workable solution.

This is a case study which allows students to examine behavior of an attorney and decide if his actions were not only ethical, but legal.

**Students will:**

1. Identify the ethical dilemma as it pertains to an attorney in a real situation.
2. Determine the proper course of action for a court in seeking to discipline an attorney.
3. Develop an understanding for the complexities of legal issues with regards to ethics.

**Materials needed:** Copies of: **Student Handout: THE LIMITS OF DEFENSE**  
**Student Handout: CANON OF ETHICS**  
**OVERHEAD: District Court Ruling**

**Time needed:** Two class periods

**Grade level:** 9th - 12th grades

**Procedure:**

1. Pose these questions to the class at the beginning of the class period:
  - Q. To what extent should attorneys go to insure their clients of a fair trial?
  - Q. Is it appropriate for an attorney to break a law in order to protect his client?
  - Q. What happens when they do?
2. Divide the class into thirds. One group will be acting as defense attorneys; one group as prosecutors; and the third group as judges.



## **RIGHTS OF THE ACCUSED**

### **LESSONS IN LEGAL ETHICS: THE LIMITS OF DEFENSE** \_\_\_\_\_

#### **Procedure cont.**

3. Give all the students the **Student Handout: THE LIMITS OF DEFENSE** and have them read. In their groups, have students identify key issues for the defense and prosecution of Richard Ryder. Ryder is being charged with unethical legal practices.
4. Pass out **Student Handout: CANON OF ETHICS** to *defense* and *prosecution* teams. Have them select two people who will give the oral interpretation for each group. They may use arguments based on the Constitution, Bill of Rights, or the **Student Handout**.
5. The group of students appointed as judges should be informed of their role in deciding the fate of Richard Ryder. The element of precedence weighs heavily, as his conduct can be argued by teams of attorneys to be acceptable or unacceptable. Therefore, the judges must develop a set of criteria by which they will judge the evidence they hear.
6. Arrange the classroom into a moot court, with the judges sitting in the front, two attorney teams on either side, and a podium table set up to address the judges. Each side will be allowed five minutes to present their oral argument to the judges. The students should be reminded that the issue being heard is ethical conduct of Richard Ryder.
7. The judges should be allowed time to prepare a written decision that is presented to the teams. If they find Richard Ryder guilty, an appropriate punishment should be levied.
8. Put up **OVERHEAD: District Court Ruling**. How does the class compare?

#### **Student Handout: THE LIMITS OF DEFENSE**

## RIGHTS OF THE ACCUSED

### LESSONS IN LEGAL ETHICS: THE LIMITS OF DEFENSE

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***“No lawyer shall commit a crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness to be a lawyer.”***

American Bar Association Rules of Professional Conduct. (1983) 8.4 (a)(c).

On August 24th, a man armed with a sawed-off shotgun robbed a branch of the Bank of Virginia of \$7,583.00. Included in this currency were \$10 bills known as “bait money,” the serial numbers of which had been recorded by the bank. On August 26th, Charles Cook rented a safety deposit box at a branch of the Richmond National Bank. Later that day, Cook was interviewed by agents of the F.B.I., who had obtained \$348.00 from Cook. Cook telephoned his attorney, Richard Ryder, who convinced the agents to allow Cook to be taken to his office for an interview. Cook insisted to Ryder that he did not rob the bank and that he had won the money that the agents had taken from him in a crap game. Ryder discovered from talking to one of the F.B.I. agents that some of the money obtained was identified as part of the money taken in the robbery of the Bank of Virginia. In further interviews on August 27th, Cook told Ryder that a man offered him \$500.00 to put a package in a safety deposit box at the Richmond National Bank. Ryder knew that Cook was under surveillance and suspected that he might try to go to the bank to withdraw the money and dispose of it.

That afternoon, Ryder telephoned a respected attorney friend to discuss the case. Ryder explained that he would take the money from Cook's deposit box and place it in a box in his own name. This, he believed, would prevent Cook from attempting to dispose of the money.

On August 29th, Ryder prepared a document, which Cook cosigned, allowing him entry into Cook's safety deposit box. Ryder took the document to the Richmond National Bank, rented a box in his own name, and entered Cook's box where he found a bag of money and a sawed-off shotgun. Ryder transferred the contents of Cook's box to his own, returned the boxes to the vault, and left the bank.

On September 7th, Charles Cook was indicted for robbery.

On September 12th, F.B.I. agents, with search warrants entered Cook's box and found it empty. They then proceeded to enter Ryder's box and found \$5,920.00 of the \$7,503.00 taken in the robbery and the sawed-off shotgun.

On September 23rd, Ryder filed a motion to suppress the evidence of the money obtained from Cook on August 26th.

On October 14th, Richard Ryder was removed as an attorney in the case and suspended until further notice.

### Student Handout: CANON OF ETHICS

## **RIGHTS OF THE ACCUSED**

### **LESSONS IN LEGAL ETHICS: THE LIMITS OF DEFENSE** \_\_\_\_\_

Case Study: *In Re Richard Ryder*: U.S. District Court: Richmond VA. 1967

Four Canon of Ethics were cited by the Court in determining if Richard Ryder should be removed from the roll of active attorneys:

**1. ``The defense/prosecution of those accused of a crime.''**

It is the right of the attorney to defend a person accused of a crime, regardless of his personal opinion as to the guilt of the accused. Having begun that defense, a lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits.

**2. ``How far a lawyer may go in supporting a client's cause.''**

The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or dishonesty.

A client is entitled to the benefit of any and every remedy and defense that is authorized by law - and he may expect his lawyer to assert every such remedy or defense.

**3. ``The lawyer's duty in it's last analysis.''**

It is the duty of the lawyer to preserve his client's confidence. This duty outlasts employment and extends as well to employees.

**OVERHEAD: District Court Ruling**

## RIGHTS OF THE ACCUSED

### LESSONS IN LEGAL ETHICS: THE LIMITS OF DEFENSE \_\_\_\_\_

United States District Court ruled that the principles listed in Number 2 and 3 of the Student Handout were violated by Richard Ryder.

The Court stated: ``*No Canon of Ethics or law permitted Ryder to conceal from the Bank of Virginia its money to gain his client's acquittal.*

*In helping Cook to conceal the shotgun and stolen money, Ryder acted outside the bounds of law. He allowed the office of attorney to be used in the violation of law.*''

The court ruled that Richard Ryder be suspended from the practice of law for a period of eighteen months.

## **Lessons in Legal Ethics: Crime and the Media**

**by John Belpedio**

Ethical issues in the legal profession are not isolated to lawyer-client relationships, but have been known to extend to law enforcement, government officials, and the media. This exercise examines a variety of ethical issues that arise in a typical criminal case today.

**Students will:**

1. Learn to identify ethical conflicts that occur in the context of a case study.
2. Develop and express opinions concerning ethical issues.
3. Identify appropriate decisions based on ethical choices.

**Materials needed:** Copies of: **Student Handout: CRIME AND THE MEDIA**

**Time needed:** Two class periods

**Grade level:** 9th - 12th grades

**Procedure:**

1. Select a newspaper article involving a criminal sexual assault that has been widely publicized by the media. The William Kennedy Smith case is a high-profile instance that students may have read about. Explain that in cases such as this, victims' rights have become a large topic of discussion. Ask students if they feel that the media should publish information regarding victims of alleged sexual assaults - or should their rights to privacy outweigh the right to publish names, addresses, and other personal information?
2. Explain to students that the case they are going to read is hypothetical, but involves decisions that legal professionals encounter with regularity. Distribute **Student Handout: CRIME AND THE MEDIA** and have them read with the intent of identifying ethical decisions that the characters are forced to make. They may want to underline or highlight conflict of ethics when they come across them in the reading.
3. Upon completion of the reading, in large group, ask students to list the ethical conflicts that arise in the story. The teacher or a student may want to list them on the blackboard or overhead.



## RIGHTS OF THE ACCUSED

### LESSONS IN LEGAL ETHICS: CRIME AND THE MEDIA \_\_\_\_\_

#### Procedure cont.

4. Divide the students into five groups. Assign a character to each group. Have the groups divide into two parts: one part will defend the actions of the character; the other half will develop an argument against the actions of the character. The five characters to be analyzed are: Jeremy Simms; Joyce Johnsen; Terry Evans; Ken Davis; and Charles Guild.
5. Upon completion of the student arguments, have student groups discuss the issues with each other. (i.e., Jeremy Simms defenders will discuss with Jeremy Simms opponents, etc.)
6. A formal role play of the characters may be done with the students acting out the five characters based on the descriptions given in the story. They should be reminded to justify their ethical decisions with legal reasoning.
7. In large group, have students discuss why incidents like "*date rape*" have become such hot issues. Which constitutional rights are in conflict? Why haven't laws been able to control the increase in sexual assault crimes in recent years? What can they suggest to stem the increase in this type of crime?

## RIGHTS OF THE ACCUSED

### LESSONS IN LEGAL ETHICS: CRIME AND THE MEDIA

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#### Student Handout: CRIME AND THE MEDIA

Jeremy John Simms has been arrested and charged with criminal sexual assault in connection with the rape of an 18 year-old woman at her home. Mr. Simms has sought the legal counsel of Joyce Johnsen, a criminal defense attorney working in private practice. Ms. Johnsen agrees to take the case and arranges a meeting with Mr. Simms.

In their first private meeting while being held in county jail, Simms explains the incident as *"perhaps a little forceful"* and *"even though the victim said 'no' several times during the encounter, she really meant 'yes'."* He went on to tell Ms. Johnsen that *"he felt he deserved a little more than a goodnight kiss, after all, this was their third date."* Mr. Simms indicated that the police may have obtained some evidence illegally, since they did not have a search warrant when they seized some articles of clothing.

During further informal conversations with Mr. Simms, Joyce Johnsen discovers information implicating him to three other sexual assaults in the neighborhood where he lives.

Joyce Johnsen enters a plea of not guilty with the court on Jeremy Simms's behalf. She also enters a motion to suppress evidence obtained during an illegal search of the defendant's residence. The motion is a request to disallow the evidence under the *Exclusionary Rule* which prevents illegally obtained evidence from being used in court.

Terry Evans, the prosecutor assigned to the Simms case, is seeking charges of first-degree criminal sexual assault. He maintains that the clothing obtained is valuable physical evidence that is necessary to convict a dangerous criminal. Mr. Evans advises the court not to allow Jeremy Simms out on bail because of the rash of violent assaults that have been occurring in the city recently.

The chief of police, Ken Davis, who ordered the search of Mr. Simms's home, has been quoted as saying *"Our criminal justice system simply operates too slowly. How can the police be expected to fill out mounds of paperwork needed to satisfy a judge who issues the search warrants, while criminals like Simms are free to do whatever they want without regard for the law."*

The editor of the local newspaper, Charles Guild, has obtained information regarding this incident. Mr. Guild has stated in a fiery editorial on the increase in crime in the city that *"the public has little ammunition in the fight against crime. It is the duty of the media to uphold the First Amendment and provide the public with the information it needs to combat crime."* A front-page article detailing the incident also includes information about the victim: *"18 year-old Jennifer Billig, dancer at a local bar/restaurant who was wearing a provocative mini-skirt and strapless top on the night of the alleged assault, stated that 'Simms raped me, pure and simple!'"*

**RIGHTS OF THE ACCUSED**

**LESSONS IN LEGAL ETHICS: CRIME AND THE MEDIA** \_\_\_\_\_

**Student Handout: CRIME AND THE MEDIA cont.**

1. List the ethical conflicts listed in this story. Using your best ethical judgement, rank the conflicts in order of most serious to least serious.
  
2. Develop an argument in defense of police actions in obtaining evidence. Which constitutional amendment is in question?
  
3. Do you agree/disagree with the editor's decision to print the news article? Give reasons.
  
4. As Mr. Simms's attorney, what would you do with the information regarding his prior criminal involvement?
  
5. Choose one of the persons in the story and develop a character-sketch that you could use in a role-play activity in which you defend your actions in the above incident.

## ***Bill of Rights***

Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

### **Amendment I**

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

### **Amendment II**

*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*

### **Amendment III**

*No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.*

### **Amendment IV**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

## **RIGHTS OF THE ACCUSED**

### **BILL OF RIGHTS TO THE UNITED STATES CONSTITUTION** \_\_\_\_\_

#### **Amendment V**

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.*

#### **Amendment VI**

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

#### **Amendment VII**

*In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

#### **Amendment VIII**

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

#### **Amendment IX**

*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

#### **Amendment X**

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*



## RIGHTS OF THE ACCUSED

### BILL OF RIGHTS TO THE UNITED STATES CONSTITUTION \_\_\_\_\_

#### Amendment XIV

**Section 1.** *All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

## Simplified United States Constitution and Bill of Rights

*"We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."*

1. The Constitution gives the power of making laws to Congress.

Congress shall consist of two houses, a Senate and a House of Representatives.

### *The House of Representatives:*

Term of members: two years

A member must be at least twenty-five years old, seven years a citizen of the U.S., and when elected, an inhabitant of the state in which he or she was elected. Representation and direct taxes are decided according to the number of people living in each state. Originally persons not free (meaning black slaves) counted as three-fifths of a free persons for those purposes, but since the 14th Amendment this is no longer the case.

Not more than one representative for every thirty thousand people. The House shall choose its Speaker and other officers.

### *The Senate*

Term of senators: six years (one out of every three senators completes his or her term every two years.)

A senator must be thirty years of age, nine years a citizen of the U.S., and an inhabitant of the state in which he or she was chosen.

The Vice President of the U.S. is President of the Senate, but only votes when there is a tie.

### *Privileges or Rights of Congress*

Members cannot be arrested when attending sessions or going to or returning home. Members cannot be questioned in any other place for any speech or debate in either House.

### *Lawmaking*

Money bills must start in the House. Then they have to be approved by the Senate.

When a bill passes both Houses it goes to the President for approval. If signed by the President, it becomes law. If the President does not want to sign it, the bill should be returned to Congress, which can pass it over the President's veto by a two-thirds vote in both Houses. If the bill is not returned to Congress in 10 days, it becomes law without the President's signature. But if Congress has already adjourned and the President fails to return it, it is not a law (*pocket veto*).

### *Powers of Congress*

To lay and collect taxes

To pay the debts

To provide for the common defense and general welfare of the U.S.

To borrow money

To regulate commerce with foreign nations and among the states

To establish uniform rules of naturalization (making people not born in U.S. American citizens)

To coin money

To set up lower federal courts

To declare war

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### SIMPLIFIED UNITED STATES CONSTITUTION AND BILL OF RIGHTS

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- To raise and support an army and a navy
- To provide for calling out the state militia to carry out the laws of the U.S., put down rebellion and repel invasions
- To govern an area not to exceed ten miles square to become the Capital of the U.S. (This became Washington, D.C.), and to govern forts, arsenals, dockyards, and other "needful buildings"
- To admit new states into the Union
- To make rules and regulations for the territories of the U.S.
- "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

2. The Constitution gives the *executive power* to the *President*.

Term of the President is four years.

Election by an *electoral college*. The person having the greatest number of votes to be President; second highest, Vice President. In case no one has a majority of the electoral votes, then the House of Representatives shall pick a President from the top five. The House shall vote by states and a majority is needed to elect. The *12th Amendment* (1804) provided that the electors state who their choice was for President and who it was for Vice President.

A President must be "a natural born citizen" or a citizen of the U.S. at the time of the adoption of the Constitution. A president must also be at least thirty-five years old and a resident within the U.S. for fourteen years. In case the President is removed from office, is unable to carry out the duties of the office, or dies, the Vice President shall act as President. Before entering office the President is required to take an oath to "preserve, protect, and defend the Constitution of the United States."

#### *Powers of the President*

- The President is commander-in-chief of the army and navy and of the state militia when called into the service of the U.S.
- The President may pardon persons punished for offenses against the U.S.
- The President can make treaties, but two-thirds of the Senators must agree to them.
- The president appoints public officials, ambassadors, Supreme Court judges, etc., with the advice and consent of the Senate.
- The President can call both Houses together on very special occasions.
- The President is to carry out the laws of the U.S. faithfully.

#### *Removal:*

The President and all other civil officials can be removed from office on impeachment for, and conviction of "treason, bribery, or other high crimes and misdemeanors." The house of Representatives presents the charges against an official, who is tried in the Senate. In an impeachment trial of the President, the Chief Justice presides over the Senate and a two-thirds vote is needed for conviction.

3. The Constitution gives "judicial power," the power for judging, to a *Supreme Court* and lower courts.

Term of the judges: They shall hold office "during good behavior" - that is to say, they cannot be dismissed unless they do wrong.

The U.S. courts can hear suits between states, between a state and a citizen of another state, between citizens of different states, and between a state or citizen and a foreign state or a foreign citizen. They can also try cases arising from matters on the high seas (admiralty).

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All crimes, except impeachment of officeholders, shall be tried by jury. Treason against the U.S. shall consist of making war or joining the enemies of the U.S. or "giving them aid and comfort." No person shall be convicted of treason unless two witnesses saw that person commit the act, or unless he or she confesses in court.

4. The Constitution *forbids the states*  
To make a treaty or alliance with a foreign country  
To issue paper money  
To keep contracts from being carried out  
To grant titles of nobility (Congress also is not allowed to do this)  
To levy taxes on imports or exports  
To keep troops or ships of war in times of peace  
To go to war without the consent of Congress

5. To change or amend the Constitution two ways are provided:  
a) Congress by a *two-thirds* vote can propose an amendment  
b) A Convention can be called by two-thirds of the states to propose amendments

In either case, *three-fourths of the state legislatures* must approve the change before it becomes a part of the Constitution.

6. The Constitution, the laws of the U.S., and Treaties shall be "the supreme law of the land," binding on every judge in every state.

7. Nobody shall be required to belong to a particular religion in order to hold an office in the U.S. government.

## The Amendments

(Dates tell when the amendments became part of the Constitution.)

### The Bill of Rights (or First Ten Amendments) (1791)

1. Congress is forbidden to pass any law setting up a religion or interfering with religious freedom or with free speech or with the right of people to get together peacefully and petition the government to have their grievances looked into.
2. The right of the people to keep and bear arms shall not be interfered with.
3. No soldier in time of peace shall be assigned to live in a private home without the consent of the owner, nor in time of war except in a lawful manner.
4. The people are protected against search and seizure without a warrant.
5. A grand jury is provided for in serious crimes. Persons are protected from being tried twice for the same offense, or from having to testify in criminal cases against themselves, or from being deprived of life, liberty, or property without lawful means.
6. A fair and speedy trial for the accused is guaranteed in criminal cases.
7. A jury trial is provided for in civil suits exceeding \$20.
8. Very high bail, stiff fines, or cruel punishment are forbidden.



## RIGHTS OF THE ACCUSED

### SIMPLIFIED UNITED STATES CONSTITUTION AND BILL OF RIGHTS

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9. Just because certain rights of the people have been stated in the Constitution does not mean that they do not have still others not mentioned there.

10. All powers not given by the Constitution to the U.S. nor forbidden to the states are reserved to the states or to the people.

#### Later Amendments

11. Forbids the citizens of another state or of a foreign country from suing a state in the U.S. courts (1798).

12. Provides that the electors should state on their ballots the person they want for President and the person for Vice President (1804).

13. Forbids slavery and "involuntary servitude" (1865).

14. Forbids states from passing laws depriving *any* person of life, liberty, or property "without due process of law" or of not giving to each person the equal protection of the law (1868).

15. Forbids the U.S. or any state from preventing a person from voting because of "race, color, or previous condition of servitude" (1870).

16. Permits the income tax (1913).

17. Provides for the election of Senators *by the people* instead of by the state legislatures (1913).

18. Forbids the manufacture, sale, or shipment of intoxicating liquors (the *Prohibition Amendment*) (1919).

19. Gives women the right to vote (1920).

20. The term of the President ends on January 20. If the President elect dies before the term begins, the Vice President elect shall become President (1933).

21. Repeals the 18th Amendment; once more allows the making and sale of liquor (1933).

22. Bars any President from serving more than *two terms*. Where a Vice President has become President on the death of the President and has served more than two years of the President's term, the Vice President shall not be allowed to run for more than one term in addition (1951).

23. Gives the District of Columbia three electoral votes for the election of President and Vice President (1961).

24. *Section 1.* Forbids the United States or any state to abridge or deny any citizens the right to vote for the President or Vice President or for any state representative in Congress because of failure to pay a poll or any other tax.

*Section 2.* Gives Congress the power to enforce this article by appropriate legislation (1964).

25. Sets up a plan for the Vice President to take over the duties of the President when the latter is unable to perform them (1967).

26. Permits voting by eighteen-year-olds (1971).



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CONSTITUTION OF THE STATE OF  
MINNESOTA

Adopted October

Generally Revised November 5, 1974

Article 1. Bill of rights.  
Article 2. Name and boundaries.  
Article 3. Distribution of the powers of government.  
Article 4. Legislative department.  
Article 5. Executive department.  
Article 6. Judiciary.  
Article 7. Elective franchise.

Article 8. Impeachment and removal from office.  
Article 9. Amendments to the constitution.  
Article 10. Taxation.  
Article 11. Appropriations and finances.  
Article 12. Special legislation; local government.  
Article 13. Miscellaneous subjects.  
Article 20. Public highway system.

Preamble

We, the people of the state of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution.

ARTICLE I

BILL OF RIGHTS

Section 1. **Object of government.** Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good

Sec. 2. **Rights and privileges.** No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted.

Sec. 3. **Liberty of the press.** The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

Sec. 4. **Trial by jury.** The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict.

Sec. 5. **No excessive bail or unusual punishments.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

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**Sec. 6. Rights of accused in criminal prosecutions.** In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.

**Sec. 7. Due process; prosecutions; double jeopardy; self-incrimination; bail; habeas corpus.** No person shall be held to answer for a criminal offense without due process of law, and no person shall be put twice in jeopardy of punishment for the same offense, nor be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law. All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended unless the public safety requires it in case of rebellion or invasion.

**Sec. 8. Redress of injuries or wrongs.** Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

**Sec. 9. Treason defined.** Treason against the state consists only in levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

**Sec. 10. Unreasonable searches and seizures prohibited.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

**Sec. 11. Attainers, ex post facto laws and laws impairing contracts prohibited.** No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

**Sec. 12. Imprisonment for debt; property exemption.** No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment, or holding to bail, persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt to any laborer or servant for labor or service performed.

**Sec. 13. Private property for public use.** Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.

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**Sec. 14. Military power subordinate.** The military shall be subordinate to the civil power and no standing army shall be maintained in this state in times of peace.

**Sec. 15. Lands allodial; void agricultural leases.** All lands within the state are allodial and feudal tenures of every description with all their incidents are prohibited. Leases and grants of agricultural lands for a longer period than 21 years reserving rent or service of any kind shall be void.

**Sec. 16. Freedom of conscience; no preference to be given to any religious establishment or mode of worship.** The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

**Sec. 17. Religious tests and property qualifications prohibited.** No religious test or amount of property shall be required as a qualification for any office of public trust in the state. No religious test or amount of property shall be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

## **ARTICLE II**

### **NAME AND BOUNDARIES**

**Section 1. Name and boundaries; acceptance of organic act.** This state shall be called the state of Minnesota and shall consist of and have jurisdiction over the territory embraced in the act of Congress entitled, "An act to authorize the people of the Territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on equal footing with the original states, and the propositions contained in that act are hereby accepted, ratified and confirmed, and remain irrevocable without the consent of the United States.

**Sec. 2. Jurisdiction on boundary waters.** The state of Minnesota has concurrent jurisdiction on the Mississippi and on all other rivers and waters forming a common boundary with any other state or states. Navigable waters leading into the same, shall be common highways and forever free to citizens of the United States without any tax, duty, impost or toll therefor.

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**ARTICLE III**

**DISTRIBUTION OF THE POWERS OF GOVERNMENT**

Section 1. **Division of powers.** The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

**ARTICLE IV**

**LEGISLATIVE DEPARTMENT**

Section 1. **Composition of legislature.** The legislature consists of the senate and house of representatives.

Sec. 2. **Apportionment of members.** The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.

Sec. 3. **Census enumeration apportionment; congressional and legislative district boundaries; senate districts.** At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. Senators shall be chosen by single districts of convenient contiguous territory. No representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series.

Sec. 4. **Terms of office of senators and representatives; vacancies.** Representatives shall be chosen for a term of two years, except to fill a vacancy. Senators shall be chosen for a term of four years, except to fill a vacancy and except there shall be an entire new election of all the senators at the first election of representatives after each new legislative apportionment provided for in this article. The governor shall call elections to fill vacancies in either house of the legislature.

Sec. 5. **Restriction on holding office.** No senator or representative shall hold any other office under the authority of the United States or the state of Minnesota, except that of postmaster or of notary public. If elected or appointed to another office, a legislator may resign from the legislature by tendering his resignation to the governor.

Sec. 6. **Qualification of legislators; judging election returns and eligibility.** Senators and representatives shall be qualified voters of the state, and shall have resided one year in the state and six months immediately preceding the election in the district from which elected. Each house shall be the judge of the election returns and eligibility of its own members. The legislature shall prescribe by law the manner for taking evidence in cases of contested seats in either house.

Sec. 7. **Rules of government.** Each house may determine the rules of its proceedings,



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sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member; but no member shall be expelled a second time for the same offense.

**Sec. 8. Oath of office.** Each member and officer of the legislature before entering upon his duties shall take an oath or affirmation to support the Constitution of the United States, the constitution of this state, and to discharge faithfully the duties of his office to the best of his judgment and ability.

**Sec. 9. Compensation.** The compensation of senators and representatives shall be prescribed by law. No increase of compensation shall take effect during the period for which the members of the existing house of representatives may have been elected.

**Sec. 10. Privilege from arrest.** The members of each house in all cases except treason, felony and breach of the peace, shall be privileged from arrest during the session of their respective houses and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

**Sec. 11. Protest and dissent of members.** Two or more members of either house may dissent and protest against any act or resolution which they think injurious to the public or to any individual and have the reason of their dissent entered in the journal.

**Sec. 12. Biennial meetings; length of session; special sessions; length of adjournments.** The legislature shall meet at the seat of government in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The legislature shall not meet in regular session, nor in any adjournment thereof after the first Monday following the third Saturday in May of any year. After meeting at a time prescribed by law, the legislature may adjourn to another time. "Legislative day" shall be defined by law. A special session of the legislature may be called by the governor on extraordinary occasions. Neither house during a session of the legislature shall adjourn for more than three days (Sundays excepted) nor to any other place than that in which the two houses shall be assembled without the consent of the other house.

**Sec. 13. Quorum.** A majority of each house constitutes a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide.

**Sec. 14. Open sessions.** Each house shall be open to the public during its sessions except in cases which in its opinion require secrecy.

**Sec. 15. Officers; journals.** Each house shall elect its presiding officer and other officers as may be provided by law. Both houses shall keep journals of their proceedings, and from time to time publish the same, and the yeas and nays, when taken on any question, shall be entered in the journals.

**Sec. 16. Elections viva voce.** In all elections by the legislature members shall vote viva voce and their votes shall be entered in the journal.

**Sec. 17. Laws to embrace only one subject.** No law shall embrace more than one subject, which shall be expressed in its title.

**Sec. 18. Revenue bills to originate in house.** All bills for raising revenue shall originate in the house of representatives, but the senate may propose and concur with the



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amendments as on other bills.

**Sec. 19. Reporting of bills.** Every bill shall be reported on three different days in each house, unless, in case of urgency, two-thirds of the house where the bill is pending deem it expedient to dispense with this rule.

**Sec. 20. Enrollment of bills.** Every bill passed by both houses shall be enrolled and signed by the presiding officer of each house. Any presiding officer refusing to sign a bill passed by both houses shall thereafter be disqualified from any office of honor or profit in the state. Each house by rule shall provide the manner in which a bill shall be certified for presentation to the governor in case of such refusal.

**Sec. 21. Passage of bills on last day of session prohibited.** No bill shall be passed by either house upon the day prescribed for adjournment. This section shall not preclude the enrollment of a bill or its transmittal from one house to the other or to the executive for his signature.

**Sec. 22. Majority vote of all members to pass a law.** The style of all laws of this state shall be: "Be it enacted by the legislature of the state of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each house of the legislature, and the vote entered in the journal of each house.

**Sec. 23. Approval of bills by governor; action on veto.** Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

**Sec. 24. Presentation of orders, resolutions, and votes to governor.** Each order

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resolution or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his veto as prescribed in case of a bill.

**Sec. 25. Disorderly conduct.** During a session each house may punish by imprisonment for not more than 24 hours any person not a member who is guilty of any disorderly or contemptuous behavior in its presence.

**Sec. 26. Banking laws; two-thirds votes.** Passage of a general banking law requires the vote of two-thirds of the members of each house of the legislature.

**ARTICLE V**

**EXECUTIVE DEPARTMENT**

**Section 1. Executive officers.** The executive department consists of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the state. The governor and lieutenant governor shall be chosen jointly by a single vote applying to both offices in a manner prescribed by law.

**Sec. 2. Term of governor and lieutenant governor; qualifications.** The term of office for the governor and lieutenant governor is four years and until a successor is chosen and qualified. Each shall have attained the age of 25 years and, shall have been a bonafide resident of the state for one year next preceding his election, and shall be a citizen of the United States.

**Sec. 3. Powers and duties of governor.** The governor shall communicate by message to each session of the legislature information touching the state and country. He is commander-in-chief of the military and naval forces and may call them out to execute the laws, suppress insurrection and repel invasion. He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to his duties. With the advice and consent of the senate he may appoint notaries public and other officers provided by law. He may appoint commissioners to take the acknowledgment of deeds or other instruments in writing to be used in the state. He shall take care that the laws be faithfully executed. He shall fill any vacancy that may occur in the offices of secretary of state, treasurer, auditor, attorney general and the other state and district offices hereafter created by law until the end of the term for which the person who had vacated the office was elected or the first Monday in January following the next general election, whichever is sooner, and until a successor is chosen and qualified.

**Sec. 4. Terms and salaries of executive officers.** The term of office of the secretary of state, treasurer, attorney general and state auditor is four years and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.

**Sec. 5. Succession to offices of governor and lieutenant governor.** In case a vacancy occurs from any cause whatever in the office of governor, the lieutenant governor shall be governor during such vacancy. The compensation of the lieutenant governor shall be prescribed by law. The last elected presiding officer of the senate shall become lieutenant

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governor in case a vacancy occurs in that office. In case the governor is unable to discharge the powers and duties of his office, the same devolves on the lieutenant governor. The legislature may provide by law for the case of the removal, death, resignation, or inability both of the governor and lieutenant governor to discharge the duties of governor and may provide by law for continuity of government in periods of emergency resulting from disasters caused by enemy attack in this state, including but not limited to, succession to the powers and duties of public office and change of the seat of government.

**Sec. 6. Oath of office of state officers.** Each officer created by this article before entering upon his duties shall take an oath or affirmation to support the constitution of the United States and of this state and to discharge faithfully the duties of his office to the best of his judgment and ability.

**Sec. 7. Board of pardons.** The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment.

## **ARTICLE VI**

### **JUDICIARY**

**Section 1. Judicial power.** The judicial power of the state is vested in a supreme court, a court of appeals, if established by the legislature, a district court and such other courts, judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish. [Amended, November 2, 1982]

**Sec. 2. Supreme court.** The supreme court consists of one chief judge and not less than six nor more than eight associate judges as the legislature may establish. It shall have original jurisdiction in such remedial cases as are prescribed by law, and appellate jurisdiction in all cases, but there shall be no trial by jury in the supreme court. The legislature may establish a court of appeals and provide by law for the number of its judges, who shall not be judges of any other court, and its organization and for the review of its decisions by the supreme court. The court of appeals shall have appellate jurisdiction over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law. As provided by law judges of the court of appeals or of the district court may be assigned temporarily to act as judges of the supreme court upon its request and judges of the district court may be assigned temporarily by the supreme court to act as judges of the court of appeals. The supreme court shall appoint to serve at its pleasure a clerk, a reporter, a state law librarian and other necessary employees. [Amended, November 2, 1982]

**Sec. 3. Jurisdiction of district court.** The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.

**Sec. 4. Judicial districts; district judges.** The number and boundaries of judicial districts shall be established in the manner provided by law but the office of a district judge shall not be abolished during his term. There shall be two or more district judges in each district.



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Each judge of the district court in any district shall be a resident of that district at the time of his selection and during his continuance in office.

**Sec. 5. Qualifications; compensation.** Judges of the supreme court, the court of appeals and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office. [Amended, November 2, 1982]

**Sec. 6. Holding other office.** A judge of the supreme court, the court of appeals or the district court shall not hold any office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. His term of office shall terminate at the time he files as a candidate for an elective office of the United States or for a nonjudicial office of this state. [Amended, November 2, 1982]

**Sec. 7. Term of office; election.** The term of office of all judges shall be six years and until their successors are qualified. They shall be elected by the voters from the area which they are to serve in the manner provided by law.

**Sec. 8. Vacancy.** Whenever there is a vacancy in the office of judge the governor shall appoint in the manner provided by law a qualified person to fill the vacancy until a successor is elected and qualified. The successor shall be elected for a six year term at the next general election occurring more than one year after the appointment.

**Sec. 9. Retirement, removal and discipline.** The legislature may provide by law for retirement of all judges and for the extension of the term of any judge who becomes eligible for retirement within three years after expiration of the term for which he is selected. The legislature may also provide for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.

**Sec. 10. Retired judges.** As provided by law a retired judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

**Sec. 11. Probate jurisdiction.** Original jurisdiction in law and equity for the administration of the estates of deceased persons and all guardianship and incompetency proceedings, including jurisdiction over the administration of trust estates and for the determination of taxes contingent upon death, shall be provided by law.

**Sec. 12. Abolition of probate court; status of judges.** If the probate court is abolished by law, judges of that court who are learned in the law shall become judges of the court that assumes jurisdiction of matters described in section 11.

**Sec. 13. District court clerks.** There shall be in each county one clerk of the district court whose qualifications, duties and compensation shall be prescribed by law. He shall serve at the pleasure of a majority of the judges of the district court in each district

## **ARTICLE VII**

### **ELECTIVE FRANCHISE**

**Section 1. Eligibility; place of voting; ineligible persons.** Every person 18 years of

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age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

**Sec. 2. Residence.** For the purpose of voting no person loses residence solely by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this state or of the United States; nor while a student in any institution of learning; nor while kept at any almshouse or asylum; nor while confined in any public prison. No soldier, seaman or marine in the army or navy of the United States is a resident of this state solely in consequence of being stationed within the state.

**Sec. 3. Uniform oath at elections.** The legislature shall provide for a uniform oath or affirmation to be administered at elections and no person shall be compelled to take any other or different form of oath to entitle him to vote.

**Sec. 4. Civil process suspended on election day.** During the day on which an election is held no person shall be arrested by virtue of any civil process.

**Sec. 5. Elections by ballot.** All elections shall be by ballot except for such town officers as may be directed by law to be otherwise chosen.

**Sec. 6. Eligibility to hold office.** Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the constitution and law of the United States.

**Sec. 7. Official year of state.** The official year for the state of Minnesota commences on the first Monday in January in each year and all terms of office terminate at that time. The general election shall be held on the first Tuesday after the first Monday in November in each even numbered year.

**Sec. 8. Election returns to secretary of state; board of canvassers.** The returns of every election for officeholders elected statewide shall be made to the secretary of state who shall call to his assistance two or more of the judges of the supreme court and two disinterested judges of the district courts. They shall constitute a board of canvassers to canvass the returns and declare the result within three days after the canvass.

**Sec. 9. Campaign spending limits.** The amount that may be spent by candidates for constitutional and legislative offices to campaign for nomination or election shall be limited by law. The legislature shall provide by law for disclosure of contributions and expenditures made to support or oppose candidates for state elective offices.[Adopted, November 4, 1980]



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**ARTICLE VIII**

**IMPEACHMENT AND REMOVAL FROM OFFICE**

**Section 1. Impeachment powers.** The house of representatives has the sole power of impeachment through a concurrence of a majority of all its members. All impeachments shall be tried by the senate. When sitting for that purpose, senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators present.

**Sec. 2. Officers subject to impeachment; grounds; judgment.** The governor, secretary of state, treasurer, auditor, attorney general and the judges of the supreme court, court of appeals and district courts may be impeached for corrupt conduct in office or for crimes and misdemeanors; but judgment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this state. The party convicted shall also be subject to indictment, trial, judgment and punishment according to law. [Amended, November 2, 1982]

**Sec. 3. Suspension.** No officer shall exercise the duties of his office after he has been impeached and before his acquittal.

**Sec. 4. Service of impeachment papers.** No person shall be tried on impeachment before he has been served with a copy thereof at least 20 days previous to the day set for trial.

**Sec. 5. Removal of inferior officers.** The legislature of this state may provide for the removal of inferior officers for malfeasance or nonfeasance in the performance of their duties.

**ARTICLE IX**

**AMENDMENTS TO THE CONSTITUTION**

**Section 1. Amendments; ratification.** A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.

**Sec. 2. Constitutional convention.** Two-thirds of the members elected to each house of the legislature may submit to the electors at the next general election the question of calling a convention to revise this constitution. If a majority of all the electors voting at the election vote for a convention, the legislature at its next session, shall provide by law for calling the convention. The convention shall consist of as many delegates as there are members of the house of representatives. Delegates shall be chosen in the same manner as members of the house of representatives and shall meet within three months after their election. Section 5 of Article IV of the constitution does not apply to election to the convention.

**Sec. 3. Submission to people of constitution drafted at convention.** A convention called to revise this constitution shall submit any revision to the people for approval or rejection.

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tion at the next general election held not less than 90 days after submission of the revision. If three-fifths of all the electors voting on the question vote to ratify the revision, it becomes a new constitution of the state of Minnesota.

## ARTICLE X

### TAXATION

**Section 1. Power of taxation; exemptions; legislative powers.** The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding in value \$200 for each household, individual or head of a family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

**Sec. 2. Forestation.** To encourage and promote forestation and reforestation of lands whether owned by private persons or the public, laws may be enacted fixing in advance a definite and limited annual tax on the lands for a term of years and imposing a yield tax on the timber and other forest products at or after the end of the term.

**Sec. 3. Occupation tax; ores.** Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state an occupation tax on the valuation of all ores mined or produced, which tax shall be in addition to all other taxes provided by law. The tax is due on the first day of May in the calendar year next following the mining or producing. The valuation of ore for the purpose of determining the amount of tax shall be ascertained as provided by law. Funds derived from the tax shall be used as follows: 50 percent to the state general revenue fund, 40 percent for the support of elementary and secondary schools and ten percent for the general support of the university.

**Sec. 4. Motor fuel taxation.** The state may levy an excise tax upon any means or substance for propelling aircraft or for propelling or operating motor or other vehicles or other equipment used for airport purposes and not used on the public highways of this state.

**Sec. 5. Aircraft.** The legislature may tax aircraft using the air space overlying the state on a more onerous basis than other personal property. Any such tax on aircraft shall be in lieu of all other taxes. The legislature may impose the tax on aircraft of companies paying taxes under any gross earnings system of taxation notwithstanding that earnings from the aircraft are included in the earnings on which gross earnings taxes are computed. The law may exempt from taxation aircraft owned by a nonresident of the state temporarily using the

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**Sec. 3. Occupation tax; ores.** Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state an occupation tax on the valuation of all ores mined or produced, which tax shall be in addition to all other taxes provided by law. The tax is due on the first day of May in the calendar year next following the mining or producing. The valuation of ore for the purpose of determining the amount of tax shall be ascertained as provided by law. Funds derived from the tax shall be used as follows: 50 percent to the state general revenue fund, 40 percent for the support of elementary and secondary schools and ten percent for the general support of the university.

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air space overlying the state.

**Sec. 6. Taconite taxation.** Laws of Minnesota 1963, Chapter 81, relating to the taxation of taconite and semi-taconite, and facilities for the mining, production and beneficiation thereof shall not be repealed, modified or amended, nor shall any laws in conflict therewith be valid until November 4, 1989. Laws may be enacted fixing or limiting for a period not extending beyond the year 1990, the tax to be imposed on persons engaged in (1) the mining, production or beneficiation of copper, (2) the mining, production or beneficiation of copper-nickel, or (3) the mining, production or beneficiation of nickel. Taxes imposed on the mining or quarrying of taconite or semi-taconite and on the production of iron ore concentrates therefrom, which are in lieu of a tax on real or personal property, shall not be considered to be occupation, royalty, or excise taxes within the meaning of this amendment.

**Sec. 7. [Repealed, November 5, 1974]**

**Sec. 8. Parimutuel betting.** The legislature may authorize on-track parimutuel betting on horse racing in a manner prescribed by law. [Adopted, November 2, 1982]

## **ARTICLE X**

### **APPROPRIATIONS AND FINANCES**

**Section 1. Money paid from state treasury.** No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

**Sec. 2. Credit of the state limited.** The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided.

**Sec. 3. Internal improvements prohibited; exceptions.** The state shall not be a party in carrying on works of internal improvements except as authorized by this constitution. If grants have been made to the state especially dedicated to specific purposes, the state shall devote the proceeds of the grants to those purposes and may pledge or appropriate the revenues derived from the works in aid of their completion.

**Sec. 4. Power to contract public debt; public debt defined.** The state may contract public debts for which its full faith, credit and taxing powers may be pledged at the times and in the manner authorized by law, but only for the purposes and subject to the conditions stated in section 5. Public debt includes any obligation payable directly in whole or in part from a tax of state wide application on any class of property, income, transaction or privilege, but does not include any obligation which is payable from revenues other than taxes.

**Sec. 5. Public debt and works of internal improvement; purposes.** Public debt may be contracted and works of internal improvements carried on for the following purposes:

(a) to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes if the law authorizing the debt is adopted by the vote of at least three-fifths of the members of each house of the legislature;

(b) to repel invasion or suppress insurrection;

(c) to borrow temporarily as authorized in section 6;

(d) to refund outstanding bonds of the state or any of its agencies whether or not the



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full faith and credit of the state has been pledged for the payment of the bonds;

(e) to establish and maintain highways subject to the limitations of article XIV;

(f) to promote forestation and prevent and abate forest fires, including the compulsory clearing and improving of wild lands whether public or private;

(g) to construct, improve and operate airports and other air navigation facilities;

(h) to develop the state's agricultural resources by extending credit on real estate security in the manner and on the terms and conditions prescribed by law;

(i) to improve and rehabilitate railroad rights-of-way and other rail facilities whether public or private, provided that bonds issued and unpaid shall not at any time exceed \$200,000,000 par value; and (j) as otherwise authorized in this constitution.

As authorized by law political subdivisions may engage in the works permitted by (f), (g), and (i) and contract debt therefor. [Amended, November 2, 1982]

**Sec. 6. Certificates of indebtedness.** As authorized by law certificates of indebtedness may be issued during a biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, in anticipation of the collection of taxes levied for and other revenues appropriated to any fund of the state for expenditure during that biennium.

No certificates shall be issued in an amount which with interest thereon to maturity, added to the then outstanding certificates against a fund and interest thereon to maturity, will exceed the then unexpended balance of all money which will be credited to that fund during the biennium under existing laws. The maturities of certificates may be extended by refunding to a date not later than December 1 of the first full calendar year following the biennium in which the certificates were issued. If money on hand in any fund is not sufficient to pay all non-refunding certificates of indebtedness issued on a fund during any biennium and all certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of the biennium, the state auditor shall levy upon all taxable property in the state a tax collectible in the ensuing year sufficient to pay the same on or before December 1 of the ensuing year with interest to the date or dates of payment.

**Sec. 7. Bonds.** Public debt other than certificates of indebtedness authorized in section 6 shall be evidenced by the issuance of bonds of the state. All bonds issued under the provisions of this section shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose. The state treasurer shall maintain a separate and special state bond fund on his official books and records. When the full faith and credit of the state has been pledged for the payment of bonds, the state auditor shall levy each year on all taxable property within the state a tax sufficient with the balance then on hand in the fund to pay all principal and interest on bonds issued under this section due and to become due within the ensuing year and to and including July 1 in the second ensuing year. The legislature by law may appropriate funds from any source to the state bond fund. The amount of money actually received and on hand pursuant to appropriations prior to the levy of the tax in any year shall be used to reduce the amount of tax otherwise required to be levied.

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**Sec. 8. Permanent school fund; source; investment; board of investment.** The permanent school fund of the state consists of (a) the proceeds of lands granted by the United States for the use of schools within each township, (b) the proceeds derived from swamp lands granted to the state, (c) all cash and investments credited to the permanent school fund and to the swamp land fund, and (d) all cash and investments credited to the internal improvement land fund and the lands therein. No portion of these lands shall be sold otherwise than at public sale, and in the manner provided by law. All funds arising from the sale or other disposition of the lands, or income accruing in any way before the sale or disposition thereof shall be credited to the permanent school fund. Within limitations prescribed by law, the fund shall be invested to secure the maximum return consistent with the maintenance of the perpetuity of the fund. The principal of the permanent school fund shall be perpetual and inviolate forever. This does not prevent the sale of investments at less than the cost to the fund; however, all losses not offset by gains shall be repaid to the fund from the interest and dividends earned thereafter. The net interest and dividends arising from the fund shall be distributed to the different school districts of the state in a manner prescribed by law.

A board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state, and the attorney general is hereby constituted for the purpose of administering and directing the investment of all state funds. The board shall not permit state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or the issuer's agent. [Amended, November 6, 1984]

**Sec. 9. Investment of permanent university fund; restrictions.** The permanent university fund of this state may be loaned to or invested in the bonds of any county, school district, city or town of this state and in first mortgage loans secured upon improved and cultivated farm lands of this state, but no such investment or loan shall be made until approved by the board of investment; nor shall a loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 percent of the assessed valuation of the taxable property of the county, school district, city or town issuing the bonds; nor shall any farm loan or investment be made when the investment or loan would exceed 30 percent of the actual cash value of the farm land mortgaged to secure the investment; nor shall investments or loans be made at a lower rate of interest than two percent per annum nor for a shorter period than one year nor for a longer period than 30 years.

**Sec. 10. Exchange of public lands; reservation of rights.** As the legislature may provide, any of the public lands of the state, including lands held in trust for any purpose, may be exchanged for any publicly or privately held lands with the unanimous approval of the governor, the attorney general and the state auditor. Lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The state shall reserve all mineral and water power rights in lands transferred by the state. [Amended, November 6, 1984]

**Sec. 11. Timber lands set apart as state forests; disposition of revenue.** School and other public lands of the state better adapted for the production of timber than for agriculture may be set apart as state school forests, or other state forests as the legislature may provide. The legislature may also provide for their management on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state.

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**Sec. 12. County, township or municipal aid to railroads limited.** The legislature shall not authorize any county, township or municipal corporation to become indebted to aid in the construction or equipment of railroads to any amount that exceeds five percent of the value of the taxable property within that county, township or municipal corporation. The amount of taxable property shall be determined by the last assessment previous to the incurring of the indebtedness.

**Sec. 13. Safekeeping state funds; security; deposit of funds; embezzlement.** All officers and other persons charged with the safekeeping of state funds shall be required to give ample security for funds received by them and to keep an accurate entry of each sum received and of each payment and transfer. If any person converts to his own use in any manner or form, or shall loan, with or without interest, or shall deposit in his own name, or otherwise than in the name of the state of Minnesota; or shall deposit in banks or with any person or persons or exchange for other funds or property, any portion of the funds of the state or the school funds aforesaid, except in the manner prescribed by law, every such act shall be and constitute an embezzlement of so much of the aforesaid state and school funds, or either of the same, as shall thus be taken, or loaned, or deposited or exchanged, and shall be a felony. Any failure to pay over, produce or account for the state school funds, or any part of the same entrusted to such officer or persons as by law required on demand, shall be held and be taken to be prima facie evidence of such embezzlement.

## **ARTICLE XI**

### **SPECIAL LEGISLATION; LOCAL GOVERNMENT**

**Section 1. Prohibition of special legislation; particular subjects.** In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated.

**Sec. 2. Special laws; local government.** Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties to which it applies. The legislature may enact special laws relating to local gov-



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ernment units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject. The legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as provided in this section.

**Sec. 3. Local government; legislation affecting.** The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof for their elective and appointive officers including qualifications for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question.

**Sec. 4. Home rule charter.** Any local government unit when authorized by law may adopt a home rule charter for its government. A charter shall become effective if approved by such majority of the voters of the local government unit as the legislature prescribes by general law. If a charter provides for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

**Sec. 5. Charter commissions.** The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations the legislature may require that commission members be freeholders, provide for their appointment by judges of the district court, and permit any member to hold any other elective or appointive office other than judicial. Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

## **ARTICLE XIII**

### **MISCELLANEOUS SUBJECTS**

**Section 1. Uniform system of public schools.** The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

**Sec. 2. Prohibition as to aiding sectarian school.** In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or

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taught.

**Sec. 3. University of Minnesota.** All the rights, immunities, franchises and endowments heretofore granted or conferred upon the university of Minnesota are perpetuated unto the university.

**Sec. 4. Lands taken for public way or use; compensation; common carriers.** Land may be taken for public way and for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for land and for the damages arising from taking it. All corporations which are common carriers enjoying the right of way in pursuance of the provisions of this section shall be bound to carry the mineral, agricultural and other productions of manufacturers on equal and reasonable terms.

**Sec. 5. Prohibition of lotteries.** The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

**Sec. 6. Prohibition of combinations to affect markets.** Any combination of persons either as individuals or as members or officers of any corporation to monopolize markets for food products in this state or to interfere with, or restrict the freedom of markets is a criminal conspiracy and shall be punished as the legislature may provide.

**Sec. 7. No license required to peddle.** Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.

**Sec. 8. Veterans' bonus.** The state may pay an adjusted compensation to persons who served in the armed forces of the United States during the period of the Vietnam conflict. Whenever authorized and in the amounts and on the terms fixed by law, the state may expend monies and pledge the public credit to provide money for the purposes of this section. The duration of the Vietnam conflict may be defined by law.

**Sec. 9. Militia organization.** The legislature shall pass laws necessary for the organization, discipline and service of the militia of the state.

**Sec. 10. Seat of government.** The seat of government of the state is in the city of St. Paul. The legislature may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by Congress for a seat of government. If the seat of government is changed, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts to be organized by the legislature of the state. The Minnesota Historical Society shall always be a department of this institution.

**Sec. 11. State seal.** A seal of the state shall be kept by the secretary of state and be used by him officially. It shall be called the great seal of the state of Minnesota.

**ARTICLE XIV**

**PUBLIC HIGHWAY SYSTEM**

**Section 1. Authority of state; participation of political subdivisions.** The state may



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construct, improve and maintain public highways, may assist political subdivisions in this work and by law may authorize any political subdivision to aid in highway work within its boundaries.

**Sec. 2. Trunk highway system.** There is hereby created a trunk highway system which shall be constructed, improved and maintained as public highways by the state. The highways shall extend as nearly as possible along the routes number 1 through 70 described in the constitutional amendment adopted November 2, 1920, and the routes described in any act of the legislature which has made or hereafter makes a route a part of the trunk highway system.

The legislature may add by law new routes to the trunk highway system. The trunk highway system may not exceed 12,200 miles in extent, except the legislature may add trunk highways in excess of the mileage limitation as necessary or expedient to take advantage of any federal aid made available by the United States to the state of Minnesota.

Any route added by the legislature to the trunk highway system may be relocated or removed from the system as provided by law. The definite location of trunk highways numbered 1 through 70 may be relocated as provided by law but no relocation shall cause a deviation from the starting points or terminals nor cause any deviation from the various villages and cities through which the routes are to pass under the constitutional amendment adopted November 2, 1920. The location of routes may be determined by boards, officers or tribunals in the manner prescribed by law.

**Sec. 3. County state-aid highway system.** A county state-aid highway system shall be constructed, improved and maintained by the counties as public highways in the manner provided by law. The system shall include streets in municipalities of less than 5,000 population where necessary to provide an integrated and coordinated highway system and may include similar streets in larger municipalities.

**Sec. 4. Municipal state-aid street system.** A municipal state-aid street system shall be constructed, improved and maintained as public highways by municipalities having a population of 5,000 or more in the manner provided by law.

**Sec. 5. Highway user tax distribution fund.** There is hereby created a highway user tax distribution fund to be used solely for highway purposes as specified in this article. The fund consists of the proceeds of any taxes authorized by sections 9 and 10 of this article. The net proceeds of the taxes shall be apportioned: 62 percent to the trunk highway fund; 29 percent to the county state-aid highway fund; nine percent to the municipal state-aid street fund. Five percent of the net proceeds of the highway user tax distribution fund may be set aside and apportioned by law to one or more of the three foregoing funds. The balance of the highway user tax distribution fund shall be transferred to the trunk highway fund, the county state-aid highway fund, and the municipal state-aid street fund in accordance with the percentages set forth in this section. No change in the apportionment of the five percent may be made within six years of the last previous change.

**Sec. 6. Trunk highway fund.** There is hereby created a trunk highway fund which shall be used solely for the purposes specified in section 2 of this article and the payment of principal and interest of any bonds issued under the authority of section 1 of this article and

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any bonds issued for trunk highway purposes prior to July 1, 1957. All payments of principal and interest on bonds issued shall be a first charge on money coming into this fund during the year in which the principal or interest is payable.

**Sec. 7. County state-aid highway fund.** There is hereby created a county state-aid highway fund. The county state-aid highway fund shall be apportioned among the counties as provided by law. The funds apportioned shall be used by the counties as provided by law for aid in the construction, improvement and maintenance of county state-aid highways. The legislature may authorize the counties by law to use a part of the funds apportioned to them to aid in the construction, improvement and maintenance of other county highways, township roads, municipal streets and any other public highways, including but not limited to trunk highways and municipal state-aid streets within the respective counties.

**Sec. 8. Municipal state-aid street fund.** There is hereby created a municipal state-aid street fund to be apportioned as provided by law among municipalities having a population of 5,000 or more. The fund shall be used by municipalities as provided by law for the construction, improvement and maintenance of municipal state-aid streets. The legislature may authorize municipalities to use a part of the fund in the construction, improvement and maintenance of other municipal streets, trunk highways, and county state-aid highways within the counties in which the municipality is located.

**Sec. 9. Taxation of motor vehicles.** The legislature by law may tax motor vehicles using the public streets and highways on a more onerous basis than other personal property. Any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes imposed by political subdivisions solely for highway purposes. The legislature may impose this tax on motor vehicles of companies paying taxes under the gross earnings system of taxation notwithstanding that earnings from the vehicles may be included in the earnings on which gross earnings taxes are computed. The proceeds of the tax shall be paid into the highway user tax distribution fund. The law may exempt from taxation any motor vehicle owned by a nonresident of the state properly licensed in another state and transiently or temporarily using the streets and highways of the state.

**Sec. 10. Taxation of motor fuel.** The legislature may levy an excise tax on any means or substance used for propelling vehicles on the public highways of this state or on the business of selling it. The proceeds of the tax shall be paid into the highway user tax distribution fund.

**Sec. 11. Highway bonds.** The legislature may provide by law for the sale of bonds to carry out the provisions of section 2. The proceeds shall be paid into the trunk highway fund. Any bonds shall mature serially over a term not exceeding 20 years and shall not be sold for less than par and accrued interest. If the trunk highway fund is not adequate to pay principal and interest of these bonds when due, the legislature may levy on all taxable property of the state in an amount sufficient to meet the deficiency or it may appropriate to the fund money in the state treasury not otherwise appropriated. [Amended, November 2, 1982]